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Rebecca McDowell Cook  
**Secretary of State**

# MISSOURI REGISTER

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Register Filing Deadlines	Register Publication	Code Publication	Code Effective
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Nov. 1, 1999	Dec. 1, 1999	Dec. 31, 1999	Jan. 30, 2000
Nov. 15, 1999	Dec. 15, 1999	Dec. 31, 1999	Jan. 30, 2000
Dec. 1, 1999	Jan. 3, 2000	Jan. 30, 2000	Feb. 29, 2000
Dec. 15, 1999	Jan. 14, 2000	Jan. 30, 2000	Feb. 29, 2000
Jan. 3, 2000	Feb. 1, 2000	Feb. 29, 2000	March 30, 2000
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May 15, 2000	June 15, 2000	June 30, 2000	July 30, 2000
June 1, 2000	July 3, 2000	July 31, 2000	August 30, 2000
June 15, 2000	July 17, 2000	July 31, 2000	August 30, 2000

Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule.

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## HOW TO CITE RULES AND RSMo

**RULES**—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 24, *Missouri Register*, page 27. The approved short form of citation is 24 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

**RSMo**—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

**R**ules appearing under this heading are filed under the authority granted by section 536.025, RSMo Supp. 1998. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

**R**ules filed as emergency rules may be effective not less than ten days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

**A**ll emergency rules must state the period during which they are in effect, and in no case can they be in effect more than 180 calendar days or 30 legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

## Title 12—DEPARTMENT OF REVENUE Division 10—Director of Revenue Chapter 2—Income Tax

### EMERGENCY AMENDMENT

**12 CSR 10-2.015 Employers' Withholding of Tax.** The director proposes to amend section (10), subsections (21)(B), (22)(A) and (B), and sections (23)(A), (27) and (30).

**PURPOSE:** *The purpose of this amendment is to bring the Form MO W-3 due date in agreement with the Internal Revenue Service due date for Form W-3, change the threshold for monthly filers and bring the retention of undeliverable employee Form W-2s in agreement with the Internal Revenue Service.*

**EMERGENCY STATEMENT:** *The director of revenue is authorized by statute to administer withholding tax and establish filing frequency thresholds. This emergency amendment is necessary to ensure public awareness of administrative changes, which is beneficial and necessary to good tax compliance. This emergency amendment is necessary to preserve a compelling governmental interest requiring an early effective date, in that the amendment brings the Missouri Form MO W-3 due dates in agreement with the Internal Revenue Service (IRS) due dates for the Form MO W-3 and establishes filing frequency thresholds for monthly filers. The director finds that there is an immediate danger to the public wel-*

*fare, which can only be addressed through this emergency amendment. The director has followed procedures calculated to assure fairness to all interested persons and parties and has complied with the protections extended by the Missouri and United States Constitutions. The director has limited the scope of the emergency amendment to the circumstances creating the emergency. Emergency amendment filed November 30, 1999, effective December 10, 1999, expires June 6, 2000.*

(10) Resident of Missouri Employed in Another State. A Missouri resident paying income tax to another state because of employment in that state may file a Withholding Affidavit For Missouri Residents, Form MO W-4C. *[which provides for exclusion from withholding when fifty percent (50%) or more of the services are performed in a state other than Missouri. The original copy must be mailed to the Department of Revenue and the duplicate retained by the employer as the basis for not withholding from the employee's wages. When a Missouri resident is employed less than fifty percent (50%) in another state having a state income tax, only income received for services performed in Missouri or another state not having a state income tax is subject to Missouri withholding. In determining the amount of tax to be withheld, the employer should use only the balance of income not subject to withholding by another state.]* If the employee does not complete Form MO W-4C, the employer may withhold Missouri taxes on all services performed, regardless of where performed. All income received for services performed in another state not having a state income tax is subject to Missouri withholding. If services are performed partly within and partly without the state, only wages paid for that portion of the services performed within Missouri are subject to Missouri withholding tax, provided that the services performed in the other state are subject to the other state's withholding provisions. If a service is partly within and partly without Missouri and only a portion of an employee's wages is subject to Missouri withholding tax, then the amount of Missouri tax required to be withheld is calculated using a percentage of the amount listed in the withholding tables. The calculation begins by determining the amount that would be withheld if all the wages were subject to Missouri withholding. This amount is then multiplied by a percent, which is determined by dividing the wages subject to Missouri withholding tax by the total federal wages.

(21) Filing Frequency Requirements. Missouri withholding returns must be filed by the due date as long as an account is maintained with the Missouri Department of Revenue, even if there was no payroll for the reporting period. Returns must be filed each reporting period, even though there may not have been any tax withheld. There are four (4) filing frequencies: quarter-monthly, monthly, quarterly and annually (section 143.221 and 143.225, RSMo). A newly registered employer is initially assigned a filing frequency on the basis of his/her estimation of future withholdings. If the assigned filing frequency differs from the filing requirements established by statute, it is the employer's responsibility to immediately notify the Department of Revenue. The time for filing shall be as follows:

(B) Monthly. Employers required to withhold *[two] five* hundred *[fifty]* dollars *[( \$250 )]* **(\$500)** per month for at least two (2) months during the preceding twelve (12) months shall file on a monthly basis;

(22) Reporting Requirement. Every employer withholding Missouri income tax from employee's wages is required by statute to report and remit the tax to the state of Missouri on the Missouri

Form MO-941. See regulation 12 CSR 10-2.016 for information on filing a Form MO-941P to remit required payments on Quarter-Monthly accounts.

(A) A separate reporting form must be filed for each reporting period. A personalized booklet of reporting forms detailing the employer's name, address, employer identification number, filing frequency and due date is provided to each active account. The voucher booklet supplied to an employer required to pay on a quarter-monthly basis also includes payment vouchers Form MO-941P, for the four (4) quarter-monthly periods. If an employer misplaces, damages or does not receive the necessary reporting forms, replacement forms should be requested, allowing sufficient time to file a timely return. If a blank form is used, the employer's name, address and identification number must appear as filed on previous returns and the period for which the remittance is made must be indicated. Failure to receive reporting forms does not relieve the employer of responsibility to report and remit tax withheld. If an employer temporarily ceases to pay wages a return must be filed for each period indicating that no tax was withheld. Failure to do so will result in the issuance of *[estimated billing]* non-filer notices.

(B) On or before *[January 31]* **February 28**, or with the final return filed at an earlier date, each employer must file a Form MO W-3 (**Transmittal of Wage and Tax Statements**) and copies of all withholding tax statements, Form W-2/**1099R**, copy 1, for the year. **Do not include the fourth quarter or 12th month return with the Form W-2(s)/1099R(s) and Form MO W-3. The last annual remittance must be sent separately with Form MO-941.** Large numbers of forms may be forwarded to the Department of Revenue in packages of convenient size. Each package must be identified with the name and account number of the employer and the packages must be consecutively numbered. Any employee's copies of the Withholding Statement (Form W-2/**1099R**) which cannot be delivered to the employee after reasonable effort is exerted, *[should be transmitted to the Missouri Department of Revenue by July 31 of the next calendar year] must be kept by the employer for at least four (4) years. [Any branch establishments of the employer may send any undeliverable employee's copies directly to the Department of Revenue.]* The Department of Revenue will accept computer produced magnetic tape records instead of the paper Form W-2/**1099R**. The employer must meet tape data specifications which are established by the Department of Revenue. **The Department follows specifications outlined in Social Security Administration Publication 42-007. Employers must also include the Supplemental record (Code S or Code 1 S).**

#### (23) Time and Place for Filing Returns and Remitting Tax.

(A) All returns and remittances must be filed with the Department of Revenue at the specific address indicated on the *[voucher]* form. The dates on which the returns and payments are due are as follows:

1. Quarter-Monthly (see 12 CSR 10-2.016). The quarter-monthly periods are: the first seven (7) days of a calendar month; the eighth to the fifteenth day of a calendar month; the sixteenth to the twenty-second day of a calendar month; and the twenty-third day through the last day of a calendar month. Payments must be mailed within three (3) banking days after the end of the quarter-monthly period or received by the Department of Revenue or its designated depository within four (4) banking days after the end of the quarter-monthly period. A monthly return (MO-941) reconciling the quarter-monthly payments and detailing any underpayment of tax is due by the fifteenth day of the following month except for the third month of a quarter in which case the MO-941 is due the last day of the succeeding month;

2. Monthly. Return and payment must be made by the fifteenth day of the following month except for the third month of a quarter in which case the return is due the last day of the succeeding month;

3. Quarterly. Return and payment must be made on or before the last day of the month following the close of the calendar quarter; and

4. Annually. Return and payment must be made on or before January 31 of the succeeding year.

(27) Failure to Pay Taxes Withheld—Special Deposits. Any employer who fails to remit income tax withheld, or to file tax returns as required, may be required to deposit the taxes in a special trust account for Missouri (see *[sub]*section 32.052, RSMo). Penalties are provided for failure to make payment. If the director of revenue finds that the collection of taxes required to be deducted and withheld by an employer may be jeopardized by delay, s/he may require the employer to remit the tax or make a return at any time. A lien outstanding with regard to any tax administered by the director shall be a sufficient basis for this action (see *[sub]*section 143.221.4, RSMo). In addition, any officer, director, statutory trustee or employee of any corporation who has direct control, supervision or responsibility for filing returns and making payments of the tax, who fails to file and make payment, may be personally assessed the tax, including interest, additions to tax and penalties pursuant to *[sub]*section 143.241.2, RSMo.

#### (30) Penalties, Interest and Additions to Tax.

(B) An employer's failure to file a timely return, unless due to reasonable cause and not due to willful neglect, will result in additions to tax of five percent (5%) per month or a fraction of a month not to exceed twenty-five percent (25%) pursuant to *[subdivision 143.741(1)]* **section 143.741.1**, RSMo.

(C) A deficiency is subject to an addition to tax of five percent (5%) if the delinquency is due to negligence or disregard of rules, or fifty percent (50%) if the deficiency is due to fraud pursuant to *[subdivision 143.751(1) and (2)]* **section 143.751.1 and .2**, RSMo.

(D) Failure to timely pay tax requires a five percent (5%) addition to tax pursuant to *[subdivision 143.751(3)]* **section 143.751.3**, RSMo.

(E) A quarter-monthly penalty of five percent (5%*[O]*) in lieu of all other penalties, interest or additions to tax will be imposed on a quarter-monthly period underpayment pursuant to section 143.225.6, RSMo.

(F) A person who willfully fails to collect, account for or pay withholding taxes is subject to a penalty equal to the amount not paid to the state, pursuant to section 143.751(*[4]*)/.4, RSMo. In addition, any officer, director, statutory trustee or employee of any corporation who has direct control, supervision or responsibility for filing returns and making payments of the tax, who fails to file and make payment, may be personally assessed the tax, including interest, additions to tax and penalties pursuant to *[subsection]* **section 143.241.1**, RSMo.

(G) *[Criminal penalties]* **Penalties for criminal offenses** are also provided *[in]* **throughout** sections 143.911–143.951, RSMo.

(I) Failure to file a timely Wage and Tax Statement, W-2, is subject to a penalty of two dollars (\$2) per statement not to exceed one thousand dollars (\$1,000) unless the failure is due to reasonable cause and not willful neglect pursuant to *[subdivision 143.741(2)]* **section 143.741.2**, RSMo.

**AUTHORITY:** section 143.961, RSMo 1994. This rule was previously filed as "Missouri Employer's Tax Guide" Feb. 20, 1973, effective March 2, 1973. Original rule filed Jan. 29, 1974, effective Feb. 8, 1974. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Nov. 30, 1999, effective Dec. 10, 1999, expires June 6, 2000. A proposed amend-

ment covering this same material is published in this issue of the *Missouri Register*.

**Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN**

**Division 10—Health Care Plan  
Chapter 2—Plan Options**

**EMERGENCY AMENDMENT**

**22 CSR 10-2.010 Definitions.** The board is amending section (1).

**PURPOSE:** *The amendment includes changes in the definitions made by the board of trustees regarding the key terms within the Missouri Consolidated Health Care Plan.*

**EMERGENCY STATEMENT:** *This rule has a variety of changes from the current regulation. It must be in place by January 1, 2000, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2000, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 6, 1999, becomes effective January 1, 2000, and expires on June 28, 2000.*

(1) When used in this plan document, these words and phrases have the meaning—

(HH) Plan document—This statement of the terms and conditions of the plan [*revised and effective January 1, 1995,*] as adopted by the plan administrator;

(MM) Prior plan—The terms and conditions of a plan in effect for [a] the period preceding [*January 1, 1995*] coverage in the MCHCP;

(PP) Review agency—A company responsible for administration of [*the four (4) components of the Health Check program under the direction of the claims administrator*] clinical management programs;

**AUTHORITY:** *section 103.059, RSMo 1994. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. A proposed rule covering this same material is published in this issue of the Missouri Register.*

**Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN**

**Division 10—Health Care Plan  
Chapter 2—Plan Options**

**EMERGENCY AMENDMENT**

**22 CSR 10-2.020 Membership Agreement and Participation Period.** The board is amending sections (1), (3) and (4).

**PURPOSE:** *The amendment includes changes and additions made by the board of trustees regarding the employee's membership agreement and membership period for participation in the Missouri Consolidated Health Care Plan.*

**EMERGENCY STATEMENT:** *This rule has a variety of changes from the current regulation. It must be in place by January 1, 2000, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2000, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 6, 1999, becomes effective January 1, 2000, and expires on June 28, 2000.*

(1) The application packet and confirmation notice shall comprise the membership agreement between a public entity and the Missouri Consolidated Health Care Plan (MCHCP).

(A) By applying for coverage under the MCHCP a public entity agrees that—

1. For groups of less than 500 employees, the MCHCP will be the only health care offering made to its eligible members. For groups of 500 or more employees the entity may maintain a self-insured indemnity plan or one point-of-service (POS) option (either self-insured or on a fully-insured directly contracted basis), but may not offer a competing plan of the same type through the MCHCP (also see number (1)(A)8.)

2. It will contribute at least twenty-five dollars (\$25) per month toward each active employee's premium;

3. Individual and family deductibles, if appropriate, will be applied. Deductibles previously paid to meet the requirements of the terminating plan may be credited for those joining one of the indemnity options. Appropriate proof of said deductibles will be required;

4. Eligible members joining the MCHCP who were covered by any medical plan offered by the public entity or an individual policy will not be subject to any pre-existing condition;

5. Eligible members joining the MCHCP at the time of the initial eligibility of the public entity will not have to prove insurability;

6. For groups contracting only with the MCHCP, at least seventy-five percent (75%) of all eligible employees must join the MCHCP. For groups of 500 employees or more that choose one of the alternative options identified in paragraph (1)(A)1., the entity must maintain seventy-five percent (75%) coverage of all their employees covered through all of their offerings;

7. An eligible employee is one that is not covered by another group sponsored plan;

8. *[Public entities joining the plan will be able to select whatever plans they wish from those available through the MCHCP to be offered to their eligible members]* **Public entities joining the MCHCP must allow their eligible subscribers the option of choosing the managed health care plans that are available through the MCHCP that are licensed in a county in which the subscriber either lives or works;**

9. Any individual eligible as an employee may be covered as either an employee or dependent, but not both. Employees enrolled as dependents will not be considered as eligible employees in consideration of section (6); and

10. A public entity may apply a probationary period, not to exceed applicable federal guidelines, before benefits become effective.

(3) The participation period shall begin on the participant's effective date in the plan. Participation shall continue until this plan or coverage in this rule is terminated for any reason. However, transfer from the prior plan to this plan will be automatic upon the effective date of this plan *[, except that any participant confined to a hospital on the effective date of this plan shall be continued under the prior plan until discharged from the hospital]*.

(4) The effective date of participation shall be determined, subject to the effective date provision in subsection (4)(C), as follows:

(B) Dependent Coverage. Dependent participation cannot precede the employee's participation. Application for participants must be made in accordance with the following provisions. For family coverage, once an employee is participating with respect to dependents, newly acquired dependents are automatically covered on their effective dates as long as the plan administrator is notified within thirty-one (31) days of the person becoming a dependent. The employee is required to notify the plan administrator on the appropriate form of the dependent's name, date of birth, eligibility date and Social Security number, if available. Claims will not be processed until the required information is provided—

1. If an employee makes concurrent application for dependent participation on or before the date of eligibility or within thirty-one (31) days thereafter, participation for dependent will become effective on the date the employee's participation becomes effective;

2. When an employee participating in the plan first becomes eligible with respect to a dependent child(ren), coverage may become effective on the eligibility date or the first day of the month coinciding with or following the date of eligibility if application is made within thirty-one (31) days of the date of eligibility and provided any required contribution for the period is made; and

3. Unless required under federal guidelines—

A. An emancipated dependent who regains his/her dependent status is not eligible for coverage until the next open enrollment period; and

B. An eligible dependent that is covered under a spouse's health plan who loses eligibility under the criteria stipulated for dependent status under the spouse's health plan is not eligible for coverage until the next open enrollment period. **(Note: Subparagraphs (4)(B)3.A. and B. do not include dependents of retirees or long-term disability members covered under the plan.);**

(C) Effective Date *Proviso*.

1. In any instance when the employee is not actively working full-time on the date participation would otherwise have become effective, participation shall not become effective until the date the employee returns to full-time active work. However, this provision shall not apply for public entities (or any individual who is a member of that public entity) when the MCHCP is replacing coverage for that public entity.

*[2. If any dependent, other than a newborn child, is confined in a hospital on the date participation with respect to dependent coverage would otherwise become effective, participation shall become effective on the day after the date of discharge from the hospital; and]*

(D) Application for dependent coverage may be made at other times of the year when the spouse's, ex-spouse's (who is the natural parent providing coverage), or legal guardian's: 1) employment is terminated or is no longer eligible for coverage under his/her employer's plan, or 2) employer-sponsored medical plan is terminated. With respect to dependent child(ren) coverage, application may also be made at other times of the year when the member receives a court order stating s/he is responsible for providing medical coverage for the dependent child(ren) or when the dependent loses Medicaid coverage. Dependents added under any of these exceptions must supply verification from the previous insurance carrier or the member's employer that they have lost coverage and the effective date of termination. Coverage must also be requested within sixty (60) days from the termination date of the previous coverage. With respect to dependent child(ren) coverage, application may also be made at other times of the year when the member receives a court order stating s/he is responsible for providing medical coverage for the dependent child(ren). **Application must be made within 60 days of the court order.** (Note: This section does not include dependents of retirees or long-term disability recipients covered under the plan.)

**(E) When an employee experiences applicable life events, eligibility will be administered according to Health Insurance Portability and Accountability Act (HIPAA) guidelines.**

*AUTHORITY: section 103.059, RSMo 1994. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. A proposed amendment covering this same material is published in this issue of the Missouri Register.*

## Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN

### Division 10—Health Care Plan Chapter 2—Plan Options

#### EMERGENCY AMENDMENT

**22 CSR 10-2.040 Indemnity Plan Summary of Medical Benefits.** The board is amending sections (1), (3), (4), (7) and (9).

*PURPOSE: The amendment includes changes made by the board of trustees regarding medical benefits for participants in the Missouri Consolidated Health Care Plan.*

*EMERGENCY STATEMENT: This rule has a variety of changes from the current regulation. It must be in place by January 1, 2000, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated*

*Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2000, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 6, 1999, becomes effective January 1, 2000, and expires on June 28, 2000.*

(1) Lifetime maximum, *[one (1)] three (3)* million dollars.

(3) Deductible Amount—Per individual for the indemnity plan *[and the limited indemnity plan]* each calendar year, three hundred dollars (\$300), family limit each calendar year, nine hundred dollars (\$900).

(4) *[Copayment]* Coinsurance.

(C) *[Limited Indemnity Plan] Non-Network Services*—Same as subsections (4)(A) and (B), except covered charges are reimbursed on a seventy percent (70%) basis.

(7) *[Health Check] Clinical Management*—Certain benefits are subject to a utilization review (UR) program. The program consists of four (4) parts, as described in the following:

(9) Prescription Drug Program—The indemnity plan provides *[a carve-out program for prescription drugs. The program consists of]* coverage for maintenance and nonmaintenance medications, as described in the following:

*[(A) Nonmaintenance Medications—For those prescription drugs needed for short-term use only, the member will be responsible for twenty percent (20%) of a discounted rate after satisfaction of the twenty-five dollar (\$25) individual deductible (seventy-five dollars (\$75) maximum family deductible).*

*1. The prescription must be written for less than a thirty (30)-day supply.*

*2. If the member chooses a brand name medication when there is a generic available, s/he will be responsible for twenty percent (20%) of the generic medication's cost (after satisfaction of the deductible), as well as the difference between the cost of the brand name medication and the generic medication. This difference does not apply to the out-of-pocket maximum. This provision does not apply if the doctor has indicated on the prescription that the brand name is necessary.*

*(B) Maintenance Medications—For those medications listed on the maintenance medication list, as determined by the claims administrator, the member will be responsible for a fifteen-dollar (\$15) copayment for each brand name medication and a five-dollar (\$5) copayment for each generic medication.*

*1. The prescription must be written for a thirty to ninety (30–90) day supply.*

*2. Maintenance medications may be purchased from either a participating local pharmacy or the mail order facility.*

*3. Unless an exception is approved by the drug/claims administrator for a medically necessary reason, oral contraceptives must be obtained from an approved formulary list.*

*(C) Out-of-Pocket Maximum—There is a maximum out-of-pocket (including deductibles) of four hundred dollars (\$400) per individual, with a maximum family out-of-pocket of twelve hundred dollars (\$1,200). The out-of-pocket maximum applies to both maintenance and nonmaintenance medications. Once a member has reached the four hundred dollar (\$400)-maximum his/her covered drugs will be covered at 100% for the remainder of the calendar year.]*

**(A) Non-Maintenance Medications—**

**1. In-Network**

**A. \$5 Copay for 30-day supply for generic drug on the formulary**

**B. \$10 Copay for 30-day supply for brand drug on the formulary**

**C. \$15 Copay for 30-day supply for non-formulary drug**

**2. Non-Network—**The deductible will apply. After satisfaction of the deductible, claims will be paid at 50% coinsurance. Charges will not be applied to the out-of-pocket maximum.

**(B) Maintenance Medications—**Prescriptions may be filled through a mail order program for up to a 90-day supply for twice the regular copayment for a drug on the maintenance list.

*[(D)] (C) Nonparticipating Pharmacies—*If a member chooses to use a nonparticipating pharmacy, s/he will be required to pay the full cost of the prescription, then file a claim with the prescription drug administrator. S/he will be reimbursed the amount that would have been allowed at a participating pharmacy, less any applicable deductibles or coinsurance. Any difference between the amount paid by the member at a nonparticipating pharmacy and the amount that would have been allowed at a participating pharmacy will not be applied to the out-of-pocket maximum.

*AUTHORITY: section 103.059, RSMo 1994. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. A proposed amendment covering this same material is published in this issue of the Missouri Register.*

## **Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN**

### **Division 10—Health Care Plan Chapter 2—Plan Options**

#### **EMERGENCY AMENDMENT**

**22 CSR 10-2.050 Indemnity Plan Benefit Provisions and Covered Charges.** The board is amending subsection (2)(C).

*PURPOSE: The amendment includes changes made by the board of trustees regarding benefit provisions and covered charges in the Missouri Consolidated Health Care Plan.*

**EMERGENCY STATEMENT:** *This rule has a variety of changes from the current regulation. It must be in place by January 1, 2000, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2000, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 6, 1999, becomes effective January 1, 2000, and expires on June 28, 2000.*

(2) Covered Charges.

(C) Covered charges are divided into mutually exclusive types and each covered charge shall be deemed to be covered on the date the medical benefit, service or supply is received.

1. Type A charges for hospital daily room and board and routine nursing. The maximum covered charge for a private room is the hospital's most common semiprivate room rate unless a private room is recommended by a physician and approved by the claims administrator or the plan's medical review agency.

2. Type B charges for intensive care, concentrated care, coronary care or other special hospital unit designed to provide special care for critically ill or injured patients.

3. Type C charges for preadmission testing (X-ray and laboratory tests) which are conducted and which are necessary for hospital admission and which are not duplicated for screening purposes upon admission to the hospital.

4. Type D special hospital charges for inpatient medical care and supplies received during any period room and board charges are made except—

A. Those included in paragraphs (2)(C)1.-3.; and

B. Special nursing care.

5. Type E charges for outpatient medical care or supplies.

6. Type F surgery and anesthesia charges of a provider for the giving of anesthesia not included in paragraphs (2)(C)4. and 5.

7. Type G psychiatric service charges of a provider licensed to provide services which relate to care of mental conditions.

8. Type H professional service charges not included in paragraphs (2)(C)2.-7. made by a provider or by a laboratory for diagnostic laboratory and X-ray exams.

9. Type I nursing services of a registered nurse (RN), licensed practical nurse (LPN) or licensed vocational nurse (LVN) on his/her own behalf.

10. Type J professional service charges of a licensed physical therapist, occupational therapist, audiologist or respiratory therapist, subject to medical necessity review by claims administrator.

11. Type K transportation charges not included in paragraphs (2)(C)3. and 4. for professional air or ground ambulance services for local transportation to and from a hospital, from a hospital to and from a local facility which provides specialized testing or

treatment or from a hospital to a skilled nursing facility; and charges for travel within the United States by a scheduled railroad, airline or ambulatory carrier to, but not back from, the nearest hospital equipped to furnish needed special treatment.

12. Type L charges for orthopedic or prosthetic devices and hospital-type equipment not included in paragraphs (2)(C)4. and 5. for—

A. Man-made limbs or eyes for the replacing of natural limbs or eyes;

B. Casts, splints or crutches;

C. Purchase of a truss or brace as a direct result of—

(I) An injury or sickness which began while covered under these rules; or

(II) A disabling condition existing since birth;

D. Oxygen and rental of equipment for giving oxygen; rental of wheelchair or scooter (manual or powered) or hospital equipment to aid in breathing;

E. Dialysis equipment rental, supplies, upkeep and the training of the participant or an attendant to run the equipment; [and]

F. Colostomy bags and ureterostomy bags[.];

G. Bilateral hearing aids; and

H. Augmentative communication devices.

13. Type M charges for prescription drugs from a licensed pharmacist; or for anesthesia when given by a provider if not included in paragraphs (2)(C)3.-6.

14. Type N charges for skilled nursing care including room and board when the stay is medically necessary, as determined by the claims administrator.

15. Type O charges for the services of a licensed speech therapist if the charges are made for speech therapy used for the purpose of correcting speech loss or damage which—

A. Is due to a sickness or injury, other than a functional nervous disorder or surgery due to such sickness or injury; or

B. Follows surgery to correct a birth defect.

16. Type P charges for services and supplies from a home health care agency which are medically necessary, as determined by the claims administrator.

17. Type Q charges for outpatient treatment of mental and nervous conditions.

18. Type R charges for outpatient treatment of alcohol and drug abuse.

19. Type S charges for hospice services.

20. Type T charges for education and training if it will promote the patient to a lower level of medical/nursing care.

21. Type U charges for surgical and medical procedures performed by a podiatrist.

22. Type V charges for transplants.

23. Type W charges for services rendered by a physician or other provider.

**24. Type Y charges for normally covered services arising from a non-covered service.**

**AUTHORITY:** *section 103.059, RSMo Supp. 1994. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. A proposed amendment covering this same material is published in this issue of the Missouri Register.*

**Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN**

**Division 10—Health Care Plan**

**Chapter 2—Plan Options**

**EMERGENCY AMENDMENT**

**22 CSR 10-2.060 Indemnity Plan Limitations.** The board is amending section (1).

*PURPOSE: The amendment includes changes made by the board of trustees regarding limitations for participants in the Missouri Consolidated Health Care Plan Indemnity Plan.*

*EMERGENCY STATEMENT: This rule has a variety of changes from the current regulation. It must be in place by January 1, 2000, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2000, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 6, 1999, becomes effective January 1, 2000, and expires on June 28, 2000.*

(1) Benefits shall not be payable for, or in connection with, any medical benefits, services or supplies which do not come within the definition of covered charges, or any of the following:

(C) Cosmetic, plastic, reconstructive or restorative surgery performed for the purpose of improving appearance unless such expenses are incurred for repair of a disfigurement caused from any of the following:

1. An accidental injury which was sustained while covered under these rules;
2. A sickness first manifested while covered under these rules;
3. Any other accidental injury or sickness but only for expenses incurred after this coverage has been in force for at least [twelve (12)] six (6) months; or
4. A birth defect;

(D) Hearing aids **once every two years** and the fitting, eye refractions and glasses, contact lenses or their fitting of eye glasses or contact lenses (other than the first pair of contact lenses or eye glasses or the fitting after cataract surgery which is performed while covered under these rules);

(H) [To the extent provided by law, intentionally self-inflicted injury or illness, or i]Injury or sickness resulting from taking part in the commission of a felony;

(M) Except as may otherwise be specifically provided, expenses for equipment, services or supplies for any of the following, regardless of whether or not prescribed by a physician or provider:

1. Experimental/investigational procedures, as defined in the claims administrator's guidelines;
2. Exercise for the eyes;
3. Psychological testing;
4. Nerve stimulators with the exception of TENS units;
5. Any treatment of obesity due solely to overeating;
6. Custodial care;
7. [In vitro and i]In vivo artificial insemination including gamete intrafallopian transfer/zygote intrafallopian transfer (GIFT/ZIFT);
8. Travel (see EE), lodging (see EE), recreation or exercise;
9. Air conditioners, purifiers or humidifiers;
10. Nonprescription drug items (except insulin and other diabetic supplies); and
11. Acupuncture, acupressure, and biofeedback;

(R) [Alcohol] Outpatient alcohol and drug abuse treatments are limited to: [two (2) inpatient treatments per lifetime, the copayment does not apply to the out-of-pocket maximum and there is a lifetime maximum of fifty thousand dollars (\$50,000).

1. Network provider—up to thirty (30) days per calendar year paid at ninety percent (90%). In addition to three hundred dollar (\$300)-medical deductible, there is also a one hundred dollar (\$100) per day deductible for up to five (5) days.

2. Non-network provider—up to thirty (30) days per calendar year paid at seventy percent (70%). In addition to three hundred dollar (\$300)-medical deductible, there is also a one hundred fifty dollar (\$150) deductible for up to five (5) days;]

**1. Network provider**

**A. First five (5) visits paid with a \$10 co-payment.**

**B. Visit six (6) through ten (10) with a \$15 co-payment.**

**C. Additional visits paid with a \$20 co-payment.**

**2. Non-network provider**

**A. Subject to deductible and 50% co-insurance;**

[(S) Inpatient mental illness services are limited to thirty (30) days per year, and the copayment does not apply to the out-of-pocket maximum.

1. Network provider—paid at ninety (90%) percent.

2. Nonnetwork provider—paid at seventy percent (70%).

3. Partial day treatment—included acute day treatment and partial hospitalization. Treated as one-half (1/2) inpatient day toward thirty (30)-day maximum.

**A. Network provider—paid at ninety percent (90%).**

**B. Nonnetwork provider—paid at seventy percent (70%);]**

[(T)] (S) Outpatient mental illness services are limited to: [fifty (50) visits per year. The copayment does not apply to the out-of-pocket maximum.]

**1. Network provider.**

**A. First five (5) visits paid [at ninety percent (90%).] with a \$10 co-payment.**

**B. Visit six (6) through [twenty (20) paid at seventy percent (70%).] ten (10) with a \$15 co-payment.**

**C. [Visit twenty-one through fifty (21–50) paid at fifty (50) percent.] Additional visits paid with a \$20 co-payment.**

**2. Non-network provider**

**A. [First five (5) visits paid at seventy percent (70%).**

**B. Visit six through twenty (6–20) paid at fifty percent (50%).**

**C. Visit twenty-one through fifty (21–50) paid at fifty percent (50%).] Subject to deductible and 50% co-insurance;**

**[3. Intensive outpatient services**

A. Network provider paid at ninety percent (90%).

B. Non-network provider paid at seventy percent (70%);]

[(U)] (T) Marital and family counseling for group or individual psychotherapy;

[(V)] (U) Chiropractic services are limited to a maximum allowable charge of fifty dollars (\$50) per visit, and a two thousand dollar (\$2,000) total annual maximum; Diagnostic lab and X-ray services are not included in fifty dollar (\$50) maximum per visit, but are included in two thousand-dollar (\$2,000) total annual maximum;

[(W)] (V) Associated charges for noncovered services;

[(X)] (W) Any services not specifically included as a covered benefit;

[(Y)] (X) Vitamins and nutrient supplements, except prescription prenatal vitamins, vitamin B<sub>12</sub> shots, and certain vitamin therapies as determined by the claims administrator;

[(Z)] (Y) Treatment of temporal mandibular joint dysfunction (TMJ) will be covered under the plan up to maximum reimbursement of five hundred dollars (\$500) per lifetime;

[(AA)] (Z) Reversals of tubal ligations and vasectomies;

[(BB)] Cardiac rehabilitation treatments are limited to thirty-six (36) visits per calendar year;]

[(CC)] (AA) X-ray and office charges associated with flat feet;

[(DD)] (BB) Preferred Provider Organization (PPO) office visit copayments;

[(EE)] (CC) Transplants are limited to heart, lung, liver, kidney, cornea, [and] bone marrow, **pancreas and intestinal**, and are subject to medical necessity and effectiveness criteria and payment levels as determined by the claims administrator's guidelines [Benefits are limited to one hundred fifty thousand dollars (\$150,000) for services associated with the admission of the actual organ transplant with remainder of transplant cost applied to one (1) million dollar lifetime maximum.];

**Benefits are allowed in accordance with the following schedule:**

Benefit Description	The First Health National Transplant Program	First Health Network (PPO) Hospital	Non-PPO Hospital	Additional Limitations and Explanations
Plan Pays	100%	90% of NTP fees	70%* of NTP fees	Travel, lodging and meals allowance is for the transplant recipient and his or her immediate family travel companion (under age 19, both parents). The plan's co-payment will be reduced by 10% when not using The First Health National Transplant Program if you do not follow the procedures required by the clinical management services program. This penalty and your non-PPO coinsurance do not apply to the out-of-pocket maximum.
Annual Deductible	NO	YES	YES	
Organ Donor Costs Per Transplant	Unlimited	\$10,000	\$10,000	
Travel, Lodging And Meals Allowance Per Transplant	\$10,000	None	None	
Lifetime benefit Maximum	Subject To Plan Maximum	Subject To Plan Maximum	Subject To Plan Maximum	

[(FF)] (DD) Skilled nursing charges limited to one hundred twenty (120) days per calendar year[.];

[(EE)] In vivo artificial insemination subject to deductible and 50% co-insurance, which does not apply to the out-of-pocket maximum. Not covered out-of-network;

[(FF)] Eye refractions limited to one annually and only if provided in the network; and

[(GG)] Treatment of nearsightedness, farsightedness and astigmatism.

**AUTHORITY:** section 103.059, RSMo 1994. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.

**Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN**

**Division 10—Health Care Plan  
Chapter 2—Plan Options**

**EMERGENCY AMENDMENT**

**22 CSR 10-2.063 HMO/POS/POS98 Summary of Medical Benefits.** The Board is amending subsection (1)(Z).

**PURPOSE:** The amendment includes changes made by the board of trustees regarding the medical benefits of the HMO/POS and POS98 plans in the Missouri Consolidated Health Care Plan Indemnity Plan.

**EMERGENCY STATEMENT:** This rule has a variety of changes from the current regulation. It must be in place by January 1, 2000, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2000, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the **Missouri and United States Constitutions** and limits its scope to the circumstances creating the emergency. This emergency amendment is

calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 6, 1999, becomes effective January 1, 2000, and expires on June 28, 2000.

(1) Covered Charges.

(Z) Prescription Drugs—[Maximum thirty (30)-day supply, five dollar (\$5) copayment.] Insulin, syringes, test strips and glucometers are included in this coverage. [Additional restrictions may apply for use of nonformulary medication with HMO/POS. POS98 lessor of twenty dollar (\$20) copayment or cost of drug for nonformulary drug.] There is no out-of-pocket maximum. Member is responsible only for the lessor of the applicable co-payment or the cost of the drug.

**\$5 Copay for 30-day supply for generic drug on the formulary**  
**\$10 Copay for 30-day supply for brand drug on the formulary**  
**\$15 Copay for 30-day supply for non-formulary drug**

*AUTHORITY: section 103.059, RSMo 1994. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 13, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 21, 1994, effective June 30, 1995. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. A proposed amendment covering this same material is published in this issue of the Missouri Register.*

**Title 22—MISSOURI CONSOLIDATED HEALTH  
CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—Plan Options**

**EMERGENCY AMENDMENT**

**22 CSR 10-2.075 Review and Appeals procedure.** The board is amending subsection (5)(D).

*PURPOSE: This amendment includes changes made by the board of trustees regarding the review and appeals procedure for participants in the Missouri Consolidated Health Care Plan.*

*EMERGENCY STATEMENT: This rule has a variety of changes from the current regulation. It must be in place by January 1, 2000, in accordance with the renewal of our current contracts. Therefore, this rule is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies responsibility for eligible charges, beginning with the first day of coverage for the new plan year. It also provides further direction for appeals related to the operation of the plan. Many of these changes are required by either federal or state law. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rule be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2000, in order that an immediate danger is not imposed on the public welfare. This rule reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the Missouri and United States Constitutions and limits its scope to the circumstances creating the emergency. This emergency amendment is calculated to assure fairness to all interested persons*

*and parties under the circumstances. Emergency amendment filed December 6, 1999, becomes effective January 1, 2000, and expires on June 28, 2000.*

(5) All insured members of the Missouri Consolidated Health Care Plan (MCHCP) shall use the claims and administration procedures established by the HMO, POS or Indemnity health plan contract applicable to the insured member. Only after these procedures have been exhausted may the insured appeal to the MCHCP board of trustees to review the decision of the health plan contractor.

(D) Administrative decisions made solely by MCHCP may be appealed directly to the board of trustees, by either an insured member or health plan contractor.

1. All the provisions of this rule, where applicable, shall apply to these appeals.

2. The parties to such appeal shall be the appellant and the MCHCP shall be respondent.

3. The appellant, if aggrieved by the final decision of the board, shall have the right of appeal as stated in subsection (5)(C) herein.

4. In reviewing these appeals, the board and/or staff may consider:

• **Newborns—**

Notwithstanding any other rule, if a member currently has children coverage under the plan, he/she may enroll his/her newborn retroactively to the date of birth if the request is made within six months of the child's date of birth. If a member does not currently have children coverage under the plan but states that the required information was provided within the 31-day enrollment period, he/she must sign an affidavit stating that their information was provided within the required time period. The affidavit must be notarized and received in the MCHCP office within 31 days after the date of notification from the MCHCP.

Once the MCHCP receives the signed affidavit from the member, coverage for the newborn will be backdated to the date of birth, if the request was made within six months of the child's date of birth. The approval notification will include language that the MCHCP has no contractual authority to require the contractors to pay for claims that are denied due to the retroactive effective date. If an enrollment request is made under either of these two scenarios past six months following a child's date of birth, the information will be forwarded to the MCHCP Board for a decision.

• **Credible Evidence—**Notwithstanding any other rule, the MCHCP may grant an appeal and not hold the member responsible when there is credible evidence that there has been an error or miscommunication, either through the member's payroll/personnel office or the MCHCP, that was no fault of the member.

• **Change of Plans Due to Dependent Change of Address—**A member may change plans outside the open enrollment period if his/her covered dependents move out of state and their current plan cannot provide coverage.

*AUTHORITY: section 103.059, RSMo 1994. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 13, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 21, 1994, effective June 30, 1995. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. A proposed amendment covering this same material is published in this issue of the Missouri Register.*

**U**nder this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

**E**ntirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

**A**n important function of the *Missouri Register* is to solicit and encourage public participation in the rule-making process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

**I**f an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least 30 days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than 30 days after publication of the notice in the *Missouri Register*.

**A**n agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the 90-day-count necessary for the filing of the order of rulemaking.

**I**f an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than 30 days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

## Title 10—DEPARTMENT OF NATURAL RESOURCES Division 10—Air Conservation Commission Chapter 5—Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

### PROPOSED AMENDMENT

**10 CSR 10-5.380 Motor Vehicle Emissions Inspection.** The commission proposes to amend subsections (3)(E) and (3)(J) and add subsections (2)(C) and (7)(C). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan.

*PURPOSE: This amendment enacts the revised provisions of sections 643.305–643.350, RSMo. One wait time penalty is removed,*

*inspection program options for Franklin County residents are incorporated and the transitional program is incorporated.*

(2) Applicability.

**(C) Owners of motor vehicles registered in Franklin County who choose to have their vehicles biennial emission inspected shall have their vehicles inspected at emission stations in City of St. Louis or the counties of St. Louis, St. Charles, or Jefferson pursuant to this rule.**

(3) General Requirements.

(E) Emission Inspection Fee.

1. The vehicle owner or driver shall pay twenty-four dollars (\$24) to the centralized emission inspection station.

2. This fee shall also include free reinspections, provided the vehicle owner or driver complies with all reinspection requirements as required in subsection (3)(G) of this rule, and the reinspections are conducted within thirty (30) days of the initial inspection.

3. The required test fee shall be reduced on days of operation, other than the last three (3) days of operation in each calendar month, by an amount proportional to the time that the vehicle owner or driver is required to wait before the inspection begins.

*[A. If the wait time is greater than fifteen (15) minutes, the fee shall be reduced by five dollars (\$5);]*

*[B.] A. If the wait time is greater than thirty (30) minutes, the fee shall be reduced by ten dollars (\$10); or*

*[C.] B. If the wait time is greater than one (1) hour, the fee shall be reduced by twenty dollars (\$20).*

4. The fee reimbursed to the state by the contractor shall be two dollars and fifty cents (\$2.50) for each individual fee paid by a vehicle owner or driver. The fee shall be remitted to the director of revenue on a weekly basis. The director of revenue shall deposit the fee into the "Missouri Air Emission Reduction Fund" as established by 643.350, RSMo.

(J) Vehicle Registration. After a subject vehicle has passed the emission inspection or received a waiver, the emission inspection certificate of compliance issued by the emission inspection station shall be submitted with registration documents by the vehicle owner or representative to the Missouri Department of Revenue at the time of vehicle registration. **This requirement shall not apply to vehicles registered during the transitional period under subsection (7)(C) of this rule.**

(7) Documentation.

**(C) Transitional Period.** The transitional period shall begin January 1, 2000, and end when the centralized test-only emission inspection stations begin emissions inspections.

1. Owners of subject vehicles shall receive either a clean screen notice as provided in subsection (3)(I) of this rule or an emission extension certificate and emission extension sticker, which will allow subject vehicle owners to register their vehicle in a timely manner. An emission extension certificate is the document that allows subject vehicle owners to register their vehicles with a deferred emissions inspection. An emission extension sticker is the sticker that temporarily replaces the emission sticker for up to six (6) months.

2. The owner of a vehicle that has not received a clean screen notice and who cannot obtain an emission inspection during the transitional period may submit an emission extension certificate, in lieu of an emission inspection certificate, to the Missouri Department of Revenue in order to register the vehicle only during the transitional period. Owners of such vehicles who do not receive an emission extension certificate by mail may obtain one from the Department of Revenue at the time the vehicle is registered during the transitional period.

3. The emission extension certificate shall contain the certificate's expiration date.

4. The emission extension sticker shall be affixed on the inside of the vehicle's front windshield in the lower left hand corner. Previous emission inspection stickers affixed to the windshield shall be removed. Stickers are valid for six (6) calendar months.

5. The owner shall have their subject vehicle emission inspected prior to the emission extension sticker expiring.

6. The emission inspection sticker that replaces the emission extension sticker shall be valid until the subject vehicle's next required emission inspection.

7. No emission inspection fee is required for the emission extension certificate and emission extension sticker.

8. The automobile dealer may sell the vehicle with prior inspection and approval. The automobile dealer shall disclose, in writing, prior to sale, whether the vehicle obtained approval by meeting the emissions standards established pursuant to sections 643.300 to 643.355, RSMo or by obtaining a waiver pursuant to section 643.335, RSMo. A vehicle sold pursuant to this subsection by a licensed motor vehicle dealer shall be inspected and approved within the one hundred twenty (120) days immediately preceding the date of sale, and, for the purpose of registration of such vehicle, such inspection shall be considered timely.

9. The automobile dealer may sell the vehicle without prior inspection and approval. The automobile dealer shall disclose conspicuously on the sales contract and bill of sale that the purchaser has the option to return the vehicle that fails an emission inspection within ten (10) days, provided that the vehicle has no more than one thousand (1,000) additional miles since the time of sale. The automobile dealer shall inform the purchaser about emission inspecting the vehicle.

10. The automobile dealer shall either repair the returned vehicle and provide an emissions certificate and sticker within five (5) working days or enter into any mutually acceptable agreement with the purchaser.

11. The automobile dealer and used car purchaser may emission inspect their vehicles using the contractor's mobile emission vans. 1971 through 1980 model year vehicles shall have the idle test pursuant to subsection (4)(A) of this rule. 1981 and newer model year vehicles shall have the two-speed idle test pursuant to subsection (4)(E) of this rule. All vehicles shall receive the gas cap test and OBD test pursuant to subsections (5)(F) and (5)(G) of this rule.

*AUTHORITY: section 643.310.1, RSMo Supp. [1998] 1999. Original rule filed June 14, 1982, effective Jan. 13, 1983. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Nov. 30, 1999, effective Jan. 1, 2000, expires June 28, 2000. Amended: Filed Dec. 1, 1999.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE COST: This proposed amendment will cost \$7,031 in FY 2000 and \$28,968 in FY 2001. The proposed rule will cost \$234,938 in the aggregate. Note attached fiscal note for assumptions that apply.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., February 8, 2000. The public hearing will be held at the Ramada Inn, Hermitage Room, 1510 Jefferson Street, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven days prior to the hearing to Roger D. Randolph, Director, Air Pollution Control Program, 205*

*Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., February 15, 2000. Written comments shall be sent to Chief, Planning Section, Air Pollution Control Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102-0176.*

**FISCAL NOTE  
PRIVATE ENTITY COST****I. RULE NUMBER**Title: 10 – Department of Natural ResourcesDivision: 10 – Air Conservation CommissionChapter: 5 – Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan AreaType of Rulemaking: Proposed AmendmentRule Number and Name: 10 CSR 10-5.380 – Motor Vehicle Emissions Inspection**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the Proposed Rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
9,375	Motor Vehicle Owners in Franklin County	\$234,938

**III. WORKSHEET**

Fiscal Year	2000	2001	Annualized Aggregate
I/M Fee	\$7,031	\$28,968	\$31,697

- 1)  $75,000 * 0.5 = 37,500$  vehicles
- 2)  $37,500 * 0.25 = 9,375$  vehicles
- 3)  $9,375 * \$24 = \$225,000$
- 4)  $9,375 * \$21 = \$196,875$
- 5)  $\$225,000 - \$196,875 = \$28,125$
- 6)
  - a.  $9,375 * 1.03 = 9,656$  vehicles tested in FY2001
  - b.  $9,375 * 1.03^2 = 9,946$  vehicles tested in FY2002
  - c.  $9,375 * 1.03^3 = 10,244$  vehicles tested in FY2003
  - d.  $9,375 * 1.03^4 = 10,552$  vehicles tested in FY2004
  - e.  $9,375 * 1.03^5 = 10,868$  vehicles tested in FY2005
  - f.  $9,375 * 1.03^6 = 11,194$  vehicles tested in FY2006
  - g.  $9,375 * 1.03^7 = 11,530$  vehicles tested in FY2007
  - h.  $9,375 * 1.03^8 * \frac{2 \text{ mos}}{12 \text{ mos}} = 1,979$  vehicles tested in FY2008

- 7) FY 2000:  $\$28,125 * 0.25 = \$7,031$
- 8) FY 2001:  $(9,656 * \$24) - (9,656 * \$21) = \$28,968$
- 9) FY 2002 thru FY 2008 calculations are similar to 8) above except using applicable number of vehicles tested from 6) above.
- 10) The \$234,938 aggregate cost is obtained by summing the totals of 7), 8) and 9) above.
- 11) The total annualized aggregate is the aggregate cost divided by 7.4167 (or 7 years and 5 months).

#### **IV. ASSUMPTIONS**

- 1. Franklin County has 75,000 registered vehicles.
- 2. 50% of the registered Franklin County vehicles eligible for biennial emission inspection.
- 3. 25% of the eligible vehicles will choose a biennial emission inspection.
- 4. There is a \$24 inspection fee for the biennial program.
- 5. There is a \$21 inspection fee for two years of the annual inspection program (\$10.50 annually).
- 6. The difference between the annual and the biennial fees will be the additional cost that Franklin County residents will pay for an enhanced emission inspection.
- 7. Emission inspections will begin April 2000 and end August 2007 resulting in 7 years and 5 months of collecting emission fees. The life of the rule is estimated to be 7 years and 5 months.
- 8. Franklin County will grow approximately 3% a year.
- 9. There will be approximately 3 months of emission inspections in FY2000.
- 10. Franklin county residents will get these inspections in combination with other trips so no other extra cost will be incurred.

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 60—Division of Highway Safety  
Chapter 1—Motorcycle Safety Education Program**

**PROPOSED AMENDMENT**

**11 CSR 60-1.070 Motorcycle Requirements.** The division is amending section (4).

*PURPOSE: This amendment will increase the engine displacement for motorcycles used in an approved Motorcycle Rider Training Program.*

(4) A moped, no-ped, motor scooter, motor-assisted bicycle, or a motorcycle with an engine displacement of over [350cc] **500cc**—

(A) May not be used in the basic course; and

(B) May be used in the advanced course only if it meets all other requirements of this rule.

*AUTHORITY: section 302.134, RSMo [Supp. 1995] Supp. 1999. Original rule filed March 20, 1996, effective September 30, 1996. Amended: Filed Nov. 22, 1999.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Highway Safety, P.O. Box 104808, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 2—Income Tax**

**PROPOSED AMENDMENT**

**12 CSR 10-2.015 Employers' Withholding of Tax.** The director proposes to amend section (10), subsections (21)(B), (22)(A) and (B), (23)(A), and sections (27) and (30).

*PURPOSE: The purpose of this amendment is to bring the Form MO W-3 due date in agreement with the Internal Revenue Service due date for Form W-3, change the threshold for monthly filers and bring the retention of undeliverable employee Form W-2s in agreement with the Internal Revenue Service.*

(10) Resident of Missouri Employed in Another State. A Missouri resident paying income tax to another state because of employment in that state may file a Withholding Affidavit For Missouri Residents, Form MO W-4C. [which provides for exclusion from withholding when fifty percent (50%) or more of the services are performed in a state other than Missouri. The original copy must be mailed to the Department of Revenue and the duplicate retained by the employer as the basis for not withholding from the employee's wages. When a Missouri resident is employed less than fifty percent (50%) in another state having a state income tax, only income received for services performed in Missouri or another state not having a state income tax is subject to Missouri withholding. In determining the amount of tax to be withheld, the employer should use only the balance of income not subject to withholding by another state.] If the

employee does not complete Form MO W-4C, the employer may withhold Missouri taxes on all services performed, regardless of where performed. All income received for services performed in another state not having a state income tax is subject to Missouri withholding. If services are performed partly within and partly without the state, only wages paid for that portion of the services performed within Missouri are subject to Missouri withholding tax, provided that the services performed in the other state are subject to the other state's withholding provisions. If a service is partly within and partly without Missouri and only a portion of an employee's wages is subject to Missouri withholding tax, then the amount of Missouri tax required to be withheld is calculated using a percentage of the amount listed in the withholding tables. The calculation begins by determining the amount that would be withheld if all the wages were subject to Missouri withholding. This amount is then multiplied by a percent, which is determined by dividing the wages subject to Missouri withholding tax by the total federal wages.

(21) Filing Frequency Requirements. Missouri withholding returns must be filed by the due date as long as an account is maintained with the Missouri Department of Revenue, even if there was no payroll for the reporting period. Returns must be filed each reporting period, even though there may not have been any tax withheld. There are four (4) filing frequencies: quarter-monthly, monthly, quarterly and annually (section 143.221 and 143.225, RSMo). A newly registered employer is initially assigned a filing frequency on the basis of his/her estimation of future withholdings. If the assigned filing frequency differs from the filing requirements established by statute, it is the employer's responsibility to immediately notify the Department of Revenue. The time for filing shall be as follows:

(B) Monthly. Employers required to withhold [two] five hundred [fifty] dollars [(\$250)] (**\$500**) per month for at least two (2) months during the preceding twelve (12) months shall file on a monthly basis;

(22) Reporting Requirement. Every employer withholding Missouri income tax from employee's wages is required by statute to report and remit the tax to the state of Missouri on the Missouri Form MO-941. See regulation 12 CSR 10-2.016 for information on filing a Form MO-941P to remit required payments on Quarter-Monthly accounts.

(A) A separate reporting form must be filed for each reporting period. A personalized booklet of reporting forms detailing the employer's name, address, employer identification number, filing frequency and due date is provided to each active account. The voucher booklet supplied to an employer required to pay on a quarter-monthly basis also includes payment vouchers Form MO-941P, for the four (4) quarter-monthly periods. If an employer misplaces, damages or does not receive the necessary reporting forms, replacement forms should be requested, allowing sufficient time to file a timely return. If a blank form is used, the employer's name, address and identification number must appear as filed on previous returns and the period for which the remittance is made must be indicated. Failure to receive reporting forms does not relieve the employer of responsibility to report and remit tax withheld. If an employer temporarily ceases to pay wages a return must be filed for each period indicating that no tax was withheld. Failure to do so will result in the issuance of [estimated billing] non-filer notices.

(B) On or before [January 31] **February 28**, or with the final return filed at an earlier date, each employer must file a Form MO W-3 (Transmittal of Wage and Tax Statements) and copies of all withholding tax statements, Form W-2/1099R, copy 1, for the year. **Do not include the fourth quarter or twelfth month return with the Form W-2(s)/1099R(s) and Form MO W-3.** The last

**annual remittance must be sent separately with Form MO-941.** Large numbers of forms may be forwarded to the Department of Revenue in packages of convenient size. Each package must be identified with the name and account number of the employer and the packages must be consecutively numbered. Any employee's copies of the Withholding Statement (Form W-2/1099R) which cannot be delivered to the employee after reasonable effort is exerted, *[should be transmitted to the Missouri Department of Revenue by July 31 of the next calendar year. Any branch establishments of the employer may send any undeliverable employee's copies directly to the Department of Revenue.] must be kept by the employer for at least four (4) years.* The Department of Revenue will accept computer produced magnetic tape records instead of the paper Form W-2/1099R. The employer must meet tape data specifications which are established by the Department of Revenue. **The department follows specifications outlined in Social Security Administration Publication 42-007. Employers must also include the Supplemental record (Code S or Code 1 S).**

(23) Time and Place for Filing Returns and Remitting Tax.

(A) All returns and remittances must be filed with the Department of Revenue at the specific address indicated on the *[voucher]* form. The dates on which the returns and payments are due are as follows:

1. Quarter-Monthly (see 12 CSR 10-2.016). The quarter-monthly periods are: the first seven (7) days of a calendar month; the eighth to the fifteenth day of a calendar month; the sixteenth to the twenty-second day of a calendar month; and the twenty-third day through the last day of a calendar month. Payments must be mailed within three (3) banking days after the end of the quarter-monthly period or received by the Department of Revenue or its designated depository within four (4) banking days after the end of the quarter-monthly period. A monthly return (MO-941) reconciling the quarter-monthly payments and detailing any underpayment of tax is due by the fifteenth day of the following month except for the third month of a quarter in which case the MO-941 is due the last day of the succeeding month;

2. Monthly. Return and payment must be made by the fifteenth day of the following month except for the third month of a quarter in which case the return is due the last day of the succeeding month;

3. Quarterly. Return and payment must be made on or before the last day of the month following the close of the calendar quarter; and

4. Annually. Return and payment must be made on or before January 31 of the succeeding year.

(27) Failure to Pay Taxes Withheld—Special Deposits. Any employer who fails to remit income tax withheld, or to file tax returns as required, may be required to deposit the taxes in a special trust account for Missouri (see *[sub]*section 32.052, RSMo). Penalties are provided for failure to make payment. If the director of revenue finds that the collection of taxes required to be deducted and withheld by an employer may be jeopardized by delay, s/he may require the employer to remit the tax or make a return at any time. A lien outstanding with regard to any tax administered by the director shall be a sufficient basis for this action (see *[sub]*section 143.221.4, RSMo). In addition, any officer, director, statutory trustee or employee of any corporation who has direct control, supervision or responsibility for filing returns and making payments of the tax, who fails to file and make payment, may be personally assessed the tax, including interest, additions to tax and penalties pursuant to *[sub]*section 143.241.2, RSMo.

(30) Penalties, Interest and Additions to Tax.

(B) An employer's failure to file a timely return, unless due to reasonable cause and not due to willful neglect, will result in additions to tax of five percent (5%) per month or a fraction of a month

not to exceed twenty-five percent (25%) pursuant to *[subdivision 143.741(1)]* section 143.741.1, RSMo.

(C) A deficiency is subject to an addition to tax of five percent (5%) if the delinquency is due to negligence or disregard of rules, or fifty percent (50%) if the deficiency is due to fraud pursuant to *[subdivision 143.751(1) and (2)]* section 143.751.1 and .2, RSMo.

(D) Failure to timely pay tax requires a five percent (5%) addition to tax pursuant to *[subdivision 143.751(3)]* section 143.751.3, RSMo.

(E) A quarter-monthly penalty of five percent (5%*[O]*) in lieu of all other penalties, interest or addition*[n]*s to tax will be imposed on a quarter-monthly period underpayment pursuant to section 143.225.6, RSMo.

(F) A person who willfully fails to collect, account for or pay withholding taxes is subject to a penalty equal to the amount not paid to the state, pursuant to section 143.751*[(4)]*.4, RSMo. In addition, any officer, director, statutory trustee or employee of any corporation who has direct control, supervision or responsibility for filing returns and making payments of the tax, who fails to file and make payment, may be personally assessed the tax, including interest, additions to tax and penalties pursuant to *[sub]*section 143.241.1, RSMo.

(G) *[Criminal penalties]* Penalties for criminal offenses are also provided *[in]* throughout sections 143.911–143.951, RSMo.

(I) Failure to file a timely Wage and Tax Statement, W-2, is subject to a penalty of two dollars (\$2) per statement not to exceed one thousand dollars (\$1,000) unless the failure is due to reasonable cause and not willful neglect pursuant to *[subdivision 143.741(2)]* section 143.741.2, RSMo.

*AUTHORITY:* section 143.961, RSMo 1994. This rule was previously filed as "Missouri Employer's Tax Guide" Feb. 20, 1973, effective March 2, 1973. Original rule filed Jan. 29, 1974, effective Feb. 8, 1974. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Nov. 30, 1999, effective Dec. 10, 1999, expires June 6, 2000. Amended: Filed Nov. 30, 1999.

*PUBLIC COST:* This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 101—Sales/Use Tax—Nature of Tax**

**PROPOSED RULE**

**12 CSR 10-101.500 Burden of Proof**

*PURPOSE:* Section 136.300, RSMo, addresses which party has the burden of proof on any factual issue relevant to ascertaining the liability of a taxpayer. Sections 32.200, article V, section 2; 144.210; and 144.635, RSMo, also address the burden of proof and in particular the use of exemption certificates to meet the burden. Section 621.050, RSMo, addresses which party has the burden of proof in a proceeding before the Administrative Hearing

*Commission. This rule explains how these rules work together to determine which party has the burden of proof in a dispute involving sales or use tax.*

(1) In general, the taxpayer has the burden of proof except in specific circumstances.

(2) Definition of Terms.

(A) Burden of proof—Burden of persuading the finder of fact that the existence of a fact is more probable than the nonexistence.

(B) Good faith—Honesty of intention and freedom from knowledge of circumstances which ought to put the holder upon inquiry.

(3) Basic Application of Burden of Proof.

(A) The department always has the burden of proof regarding—

1. Whether the taxpayer has been guilty of fraud with attempt to evade tax; and

2. Whether the taxpayer is liable as the transferee of property of another taxpayer.

(B) The taxpayer always has the burden of proof on any issue with respect to the applicability of any tax exemption or credit.

(C) The taxpayer has the burden of proof on all other issues unless—

1. The taxpayer has produced evidence establishing there is a reasonable dispute with respect to the issue;

2. The taxpayer has adequate records of its transactions and provides the Department of Revenue reasonable access to these records;

3. In the case of a partnership, corporation or trust, the net worth of the taxpayer does not exceed seven (7) million dollars and the taxpayer does not have more than five hundred (500) employees at the time the final decision of the director of the Department of Revenue is issued; and

4. If all three (3) conditions are met, the department has the burden of proof with respect to any factual issue relevant to ascertaining the liability of a taxpayer.

(D) A taxpayer can generally meet its burden of proof by obtaining and maintaining exemption certificates signed by the purchaser or its agent. An exemption certificate that is not obtained in good faith, however, will not satisfy the burden of proof. Even when a taxpayer does not have a valid exemption certificate, it may prove that the transaction is exempt from sales and use tax by proof admissible under the applicable rules of evidence.

(4) Examples.

(A) The department alleges that a taxpayer fabricated exemption certificates in order to evade sales tax. The department has the burden of proof.

(B) The taxpayer sells tangible personal property and claims that the sale was exempt from tax. The taxpayer always has the burden of proof.

(C) The taxpayer sells tangible personal property and claims that it was a sale for resale. The taxpayer presents a valid exemption certificate. The taxpayer has met its burden of proof.

(D) A jeweler sells an expensive diamond ring to his neighbor, known to the taxpayer not to be in the jewelry business. The neighbor presents an exemption certificate claiming that the ring was purchased for resale and therefore exempt from tax. The jeweler may not accept the exemption certificate without further inquiry.

(E) A jeweler sells an expensive diamond ring to a purchaser unknown to the jeweler but does not receive an exemption certificate. On a claim that this was an exempt sale for resale, the jeweler has the burden of proof and may prove that the sale was exempt through testimony and documents admissible under the rules of evidence.

(F) A jeweler sells an expensive diamond ring to a purchaser unknown to the jeweler but does not receive an exemption certificate. The jeweler presents to the department an invoice for the diamond ring showing it was sold to a wholesale jeweler. The burden of proof shifts to the department, unless the jeweler is a partnership, corporation or trust with a net worth of more than seven (7) million dollars or with more than five (500) hundred employees.

*AUTHORITY: section 144.270, RSMo 1994. Original rule filed Nov. 18, 1999.*

*PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE COST: This proposed rule will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

## **Title 12—DEPARTMENT OF REVENUE Division 10—Director of Revenue Chapter 110—Sales/Use Tax—Exemptions**

### **PROPOSED RULE**

#### **12 CSR 10-110.900 Farm Machinery and Equipment Exemptions**

*PURPOSE: Sections 144.030.2(22), 144.045.1 and 144.047, RSMo, exempt certain farm machinery, equipment, repair parts and lubricants from taxation. This rule explains which items qualify for these exemptions.*

(1) In general, the purchase of farm machinery, equipment, repair parts and supplies used exclusively and directly for producing crops, raising and feeding livestock, fish or poultry or producing milk for ultimate sale at retail is exempt from tax.

(2) Definition of Terms.

(A) Farm machinery—Machinery and equipment used directly and exclusively in the agricultural production process.

(B) Repair and replacement parts—Items of tangible personal property that are components of exempt farm machinery and equipment. Included in the repair and replacement part category are batteries, tires, fan belts, mufflers, spark plugs, oil filters, plow points, standard type motors and cutting parts.

(3) Basic Application of Exemption.

(A) To qualify for exemption pursuant to section 144.030.2(22), RSMo, items purchased must be—

1. Used exclusively for agricultural purposes;

2. Used on land owned or leased for the purpose of producing farm products;

3. Used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail. The term “used directly” encompasses items that are used in some manner prior to the actual commencement of production, during production, or in some manner after the production has terminated. In determining whether items are used directly, consideration must be given to the following factors:

A. Where the items in question are used;

B. When the items in question are used; and

C. How the items in question are used to produce a farm product; and

4. Farm machinery or equipment that meet these requirements are exempt from tax, as are repair or replacement parts thereon and lubricants used exclusively for such farm machinery or equipment and one-half (1/2) of any diesel fuel used in such machinery or equipment.

(B) Pursuant to section 144.045.1, RSMo, farm machinery or equipment that would otherwise qualify as exempt farm machinery and equipment will not lose its exempt status merely because the machinery or equipment is attached to a vehicle or real property. Such equipment includes, but is not limited to, a grinder mixer mounted on a vehicle or special livestock flooring. When exempt farm machinery or equipment attached to a motor vehicle is sold with the motor vehicle, the part of the total sales price attributable to the farm machinery or equipment is exempt from tax if the farm machinery or equipment is separately invoiced.

(C) Pursuant to section 144.047, RSMo, farm machinery includes aircraft used solely for aerial application of agricultural chemicals.

(D) Pursuant to section 144.030.2(34), RSMo, all sales of grain bins for storage of grain for resale are exempt; however, parts purchased separately for these bins are not exempt. Grain bins and all parts purchased that qualify as farm machinery and equipment are exempt.

(E) The fact that particular items may be considered to be essential or necessary will not automatically entitle them to exemption. The following categories of items are excluded from the meaning of the term farm machinery and farm equipment and are subject to tax:

1. Under no circumstances can a motor vehicle or trailer ever be treated as tax exempt farm machinery. The terms motor vehicle and trailer are defined by the titling and licensing laws of Missouri (Chapter 301);

2. Containers and storage devices such as oil and gas storage tanks, pails, buckets and cans;

3. Hand tools and hand-operated equipment such as wheelbarrows, hoes, rakes, pitchforks, shovels, brooms, wrenches, pliers and grease guns;

4. Consumable items such as antifreeze, freon, ether, and starter fluid;

5. Attachments and accessories not essential to the operation of the machinery itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air-conditioning units, cabs, deluxe seats, tool or utility boxes and lubricators;

6. Equipment used in farm management such as communications and office equipment, repair, service, security or fire protection equipment;

7. Drainage tile, fencing material, building materials, general heating, lighting and ventilation equipment for nonproduction areas; and

8. Machinery and equipment used for a dual purpose, one purpose being agricultural and the other being nonagricultural are not exempt.

(F) Schedule A is a list of items of farm machinery and equipment which will usually be exempt if used exclusively for agricultural purposes on land owned or leased for the purpose of producing farm products and used directly in producing farm products or livestock to be sold ultimately at retail.

**Schedule A**  
**Usually Exempt Items**

Artificial insemination equipment  
Augers  
Bale loader  
Bale transportation equipment

Baler twine  
Baler wire  
Balers  
Batteries for farm machinery and equipment  
Bedding used in production of livestock or poultry for food or fiber  
Binder twine  
Binders  
Brooders  
Bulk feed storage tanks  
Bulk milk coolers  
Bulk milk tanks  
Bulldozers used exclusively in agricultural production  
Calcium for tires  
Calf weaners and feeders  
Cattle currying and oiling machine  
Cattle feeder, portable  
Chain saws for commercial use in harvesting timber, lumber and in orchard pruning  
Chicken pluckers  
Choppers  
Combines  
Conveyors, portable  
Corn pickers  
Crawlers, tractor  
Crushers  
Cultipackers  
Cultivators  
Curtains and curtain controls for livestock and poultry confinement areas  
Debeakers for productive animals  
Dehorner for productive animals  
Discs  
Drags  
Dryers  
Dusters  
Egg handling equipment  
Ensilage cutters  
Fans, livestock and poultry  
Farm tractors  
Farm wagons  
Farrowing houses, portable  
Farrowing crates  
Feed carts  
Feed grinders/mixers  
Feed storage bins  
Feeders  
Fertilizer distributors  
Flooring slats  
Foggers  
Forage boxes  
Forage harvester  
Fruit graters  
Fruit harvesters  
Generators  
Gestation crates  
Grain augers  
Grain bins for storage of grain for resale (but not separately billed parts or add-ons to these grain bins)  
Grain binders  
Grain conveyors  
Grain drills  
Grain elevators, portable  
Grain handling equipment  
Grain planters  
Greases and oils  
Harrows (including spring-tooth harrow)  
Hay loaders

Head gates  
 Heaters, livestock and poultry  
 Hog feeders, portable  
 Hoists, farm  
 Husking machines  
 Hydraulic fluid  
 Hydro-coolers  
 Incubators  
 Irrigation equipment  
 Livestock feeding, watering and handling equipment  
 Lubricating oils and grease  
 Manure handling equipment (including front and rear-end loaders and blades)  
 Manure spreaders  
 Milk cans  
 Milk coolers  
 Milk strainers  
 Milking equipment (including bulk milk refrigerators, coolers and tanks)  
 Milking machine  
 Mowers, hay and rotary blade used exclusively for agricultural purposes  
 Panels, livestock  
 Pickers  
 Planters  
 Plows  
 Poultry feeder, portable  
 Pruning and picking equipment  
 Repair and replacement parts for exempt machinery  
 Rollers  
 Root vegetable harvesters  
 Rotary hoes  
 Scales (not truck scales)  
 Seed cleaners  
 Seed planters  
 Seeders  
 Shellers  
 Silo unloaders  
 Sorters  
 Sowers  
 Sprayers  
 Spreaders  
 Sprinkler systems, livestock and poultry  
 Squeeze chutes  
 Subsoiler  
 Threshing machines  
 Tillers  
 Tires for exempt machinery  
 Tractors, farm  
 Vacuum coolers  
 Vegetable graders  
 Vegetable washers  
 Vegetable waxers  
 Wagons, farm  
 Washers, fruit, vegetable and egg  
 Waxers  
 Weeders

(G) Schedule B is a list of items, which are usually taxable.

**Schedule B**  
**Usually Taxable Items**

Acetylene torches  
 Air compressors  
 Air tanks  
 All-terrain vehicles (3-, 4- and 6-wheel)  
 Antifreeze

Automobiles  
 Axes  
 Barn ventilators  
 Brooms  
 Brushes  
 Building materials and supplies  
 Bulldozers  
 Cement  
 Chain saws  
 Cleansing agents and materials  
 Construction tools  
 Ear tags  
 Electrical wiring  
 Equipment and supplies for home or personal use  
 Ether  
 Fence building tools  
 Fence posts  
 Field toilets  
 Fire prevention equipment  
 Freon  
 Fuel additives  
 Garden hose  
 Garden rakes and hoes  
 Gasoline tanks and pumps  
 Golf carts  
 Hammers  
 Hand tools  
 Hog ringers  
 Hog rings  
 Lamps  
 Lanterns  
 Lawnmowers  
 Light bulbs  
 Marking chalk  
 Nails  
 Office supplies and equipment  
 Packing room supplies  
 Paint and decals  
 Personal property installed in or used in housing for farm workers  
 Posthole diggers (except commercial use in tree farms)  
 Pumps for household or lawn use  
 Pumps, gasoline  
 Refrigerators for home use  
 Repair tools  
 Road maintenance equipment  
 Road scrapers  
 Roofing  
 Sanders  
 Shovels  
 Silos  
 Small tools  
 Snow fence  
 Snowplows and snow equipment  
 Staples  
 Starting fluids  
 Supplies for home or personal use  
 Tanks, air  
 Tanks, gasoline  
 Tools for repair construction  
 Tractors, garden  
 Truck beds  
 Water hose  
 Welding equipment  
 Wire, fencing  
 Wrenches

(4) Examples.

(A) An implement dealer sells a soilmoover to a farmer. The soilmoover is going to be used on low-lying agricultural land exclusively for the purpose of controlling drainage. The sale of the soilmoover is exempt.

(B) A farmer purchases a combine. The farmer later purchases an AM/FM radio to be installed on the combine. The farmer's purchase of the combine is exempt; however, the farmer's purchase of the AM/FM radio is taxable. If the radio had been a part of the assembled unit, the total price for the combine would have been exempt.

(C) A farmer purchases a lawnmower. The farmer uses the lawnmower to mow around grain bins, as well as mow his lawn. The purchase of the lawnmower is subject to tax, since the lawnmower is not used exclusively and directly for agricultural production.

(D) A farmer purchases a water chiller for use to control the climate inside the hatchers and setters. The water chiller is also used to cool the administrative areas in the hatchery. The purchase of the water chiller is subject to tax, since it is not used exclusively for agricultural production.

(E) A farmer takes his tractor to the implement dealer for routine maintenance, which includes changing the oil, filters and antifreeze. The sale of the oil and filters would be exempt; however, the antifreeze would be subject to tax.

(F) A farmer buys a bale spike to be installed on his pickup truck. The bale spike is not subject to tax.

(G) A farm supply store sells commercial rabbitry equipment, such as feeders, nest boxes and wire hanging cages used for rabbit cages and feeders, to a farmer who raises rabbits in confinement for human consumption. These items are not subject to tax.

*AUTHORITY: sections 144.270 and 144.705, RSMo, (1994). Original rule filed Nov. 18, 1999.*

*PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE COST: This proposed rule will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice on the Missouri Register. No public hearing is scheduled.*

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 111—Sales/Use Tax—Machinery and  
Equipment Exemptions**

**PROPOSED RULE**

**12 CSR 10-111.060 Material Recovery Processing Plant Exemption**

*PURPOSE: Section 144.030.2(4), RSMo, exempts from taxation machinery and equipment and certain materials and supplies used to establish new, or to replace or expand existing, material recovery processing plants in this state. This rule explains the elements that must be met in order to qualify for the exemption.*

(1) In general, the purchase of machinery and equipment, and the materials and supplies required solely for the operation, installation or construction of such machinery and equipment, is exempt from tax if used to establish new, or to replace or expand existing, material recovery processing plants in this state.

(2) Definition of Terms.

(A) Material recovery processing plant—A facility which converts recovered materials into a new product, or to a different form which is used in producing a new product, and includes facilities or equipment used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but does not include motor vehicles used on highways.

(B) Recovered materials—Those materials that have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not they require subsequent separation and processing.

(3) Basic Application of Exemption.

(A) Machinery and equipment for new, or to replace or expand existing, material recovery processing plant—Purchases of machinery and equipment used to establish new, or to expand existing, material recovery processing plants in this state are not subject to tax. Purchases of the materials and supplies required solely for the operation, installation or construction of such machinery and equipment are not subject to tax.

(B) New, replacement or expanded plant—Machinery and equipment are exempt if used to establish a new, or replace or expand an existing, material recovery processing plant. Materials and supplies required solely for the operation, installation or construction of machinery and equipment used in establishing a new plant, or in replacing or expanding an existing plant are exempt.

(4) Examples.

(A) A new company purchases machinery and equipment to retread old tires. The company purchases old tires and with the use of the new machinery and equipment, it produces retread tires for sale. The machinery and equipment may be purchased under the material recovery processing plant exemption.

(B) A taxpayer recycles fuel. It processes both solid and liquid waste materials for use as a fuel in its cement manufacturing operation. The taxpayer uses shredders and pulverizers to grind the solid waste materials into sizes appropriate for processing. The taxpayer's mobile and conveyor systems are used to transport the solid and liquid wastes to different processes performed on the materials in taxpayer's facility. The fuel recycling facility would qualify as a material recovery processing plant because it converts recovered materials, solid and liquid waste materials, into a new product, fuels, that are then used to manufacture a new product, cement.

(C) Assuming the same facts as in example (4)(B), the taxpayer purchases lubricants to operate its machinery and equipment. Because the lubricants are required solely for the operation of the machinery and equipment, they are not subject to tax.

(D) Taxpayer does not operate a material recovery processing plant but operates a facility used exclusively for the collection of recovered materials for delivery to a material recovery processing plant. Taxpayer purchases storage bins, conveyors and a special truck for hauling waste material to and from its facility. The storage bins and conveyors would be exempt from tax. The special truck would be considered a motor vehicle pursuant to section 301.010, RSMo, and would be subject to tax.

(E) A taxpayer operates a recycling business that purchases aluminum, paper and other products to be bundled and then sold to facilities which use them as raw materials to produce new and different products. A taxpayer purchases loaders, baling machines and crushing equipment to prepare the materials for sale and shipping. The loaders push the materials into the balers, which com-

press the recovered materials for shipping. Because the taxpayer is collecting recyclable materials and converts them into a different form, which is then used to produce new products, the taxpayer's operation would qualify as a material recovery processing plant. The loaders, baling machines and crushing equipment would qualify for the material recovery processing plant exemption if they were purchased and used to establish a new, or to replace or expand an existing plant.

**AUTHORITY:** sections 144.270 and 144.705, RSMo 1994. Original rule filed Nov. 18, 1999.

**PUBLIC COST:** This proposed rule will not cost state agencies or political subdivisions more than \$500 in the aggregate.

**PRIVATE COST:** This proposed rule will not cost private entities more than \$500 in the aggregate.

**NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, Office of Legislation and Regulations, P.O. Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System of Missouri**  
**Chapter 6—The Nonteacher School Employee Retirement System of Missouri**

**PROPOSED AMENDMENT**

**16 CSR 10-6.020 Source of Funds.** The board is amending section (12).

**PURPOSE:** This amendment corrects the citing of an incorrect section number.

(12) The terms "salary," "salary rate" and "compensation" are synonymous when used in regulations promulgated by the board, unless the context plainly requires a different meaning.

(A) For purposes of calculating contributions and benefits, those terms mean the regular remuneration earned by a member as an employee of any covered district during a school year, including (unless excluded by subsection (12)(B)):

1. Salary paid under the terms of the basic employment agreement;
2. Wages;
3. Payments for extra duties, whether or not related to the employee's regular position;
4. Overtime payments;
5. Career ladder payments made pursuant to sections 168.500 to 168.515, RSMo;
6. Supplemental salary paid in addition to workers' compensation;
7. Medical benefits as specified in section ~~/(5)/(10)~~ of this rule;
8. Payment for annual leave, sick leave or similar paid leave actually used by the member;
9. Payment for leaves of absence if at least one hundred percent (100%) of previous contract rate;
10. Compensation on which taxation is deferred under *Internal Revenue Code* (IRC) section 401(k), 403(b), 457, 414(h)(2) or similar plans established by the employer under the IRC;
11. Salary reductions for purposes of a plan established by the employer under IRC section 125; and

12. Other similar payments that are earned by a member as an employee of any covered district during a school year.

**AUTHORITY:** section 169.610, RSMo 1994. Original rule filed Dec. 19, 1975, effective Jan. 1, 1976. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Nov. 18, 1999.

**PUBLIC COST:** This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.

**PRIVATE COST:** This proposed amendment will not cost private entities more than \$500 in the aggregate.

**NOTICE TO SUBMIT COMMENTS:** Anyone may file a statement in support of or in opposition to this proposed amendment with the Public School Retirement System of Missouri, Joel M. Walters, Executive Director, P.O. Box 268, Jefferson City, MO 65102. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 19—DEPARTMENT OF HEALTH**  
**Division 10—Office of the Director**  
**Chapter 5—Procedures for the Collection and Submission of Data to Monitor Health Maintenance Organizations**

**PROPOSED AMENDMENT**

**19 CSR 10-5.010 Monitoring Health Maintenance Organizations Definitions.** The department proposes to amend this rule by amending subsection (1)(C); amending subsections (2)(A), (B), (C) and (D); amending section (3); amending subsections (3)(A), (C) and (D); amending subsections (4)(A) and (B); amending section (5) and replacing Tables A, B, C and D.

**PURPOSE:** This amendment is to clarify the use of the term "health care plan" by modifying the definition in subsection (1)(C); to clarify the requirements on submission of annual member satisfaction survey data by modifying subsections (2)(A), (B), (C) and (D); to amend the submission requirements for the quality indicator data by modifying section (3) and subsections (3)(A), (C) and (D); to clarify the submission requirements for the enrollee linkage data by modifying subsections (4)(A) and (B); to update Table A to reflect consistency with standards of the National Quality Assurance Committee; to update Table B to reflect the data specifications for the quality indicators; to revise Table C to enhance the quality of the birth-linkage data; and to revise Table D to expand health care access information.

(1) The following definitions shall be used in the interpretation and enforcement of this rule:

(C) Health care plan means any **separately licensed** entity subject to the provisions of sections 354.400 to 354.636, RSMo which had enrollees in the plan for at least six (6) months of the year for which data are to be reported and for at least six (6) months of the following year;

(2) Starting in 1998, commercial health care plans shall submit annually to the department, member satisfaction survey data—

(A) The member satisfaction survey shall be conducted according to HEDIS<sup>®</sup> technical specifications, including survey *[questions]* instrument, sample size, *[and]* sampling method, and **collection protocols**. *[Separate satisfaction surveys shall be conducted on regular HMO and HMO point-of-service plans for commercial enrollees]* Each licensed health care plan shall submit, at a minimum, a separate satisfaction survey for their commercial enrollees;

(B) The data provided to the department shall be **submitted through the survey vendor** in electronic form and meet the specifications of Table A. **Table A is incorporated herein by reference;**

(C) In 1998 the data shall be submitted by September 1. In subsequent years *[the]* **a final data file** shall be submitted by June 15 or the date required by NCQA if other than June 15; and

(D) **Medicaid and Medicare** *[and Medicaid]* health care plans shall participate in a member satisfaction survey *[conducted]* **directed** by the Division of Medical Services and the Health Care Financing Administration, respectively. The department will obtain the data from the agencies conducting the surveys.

(3) Starting in 1998, health care plans shall provide annually to the department, audited quality indicator *[rates and the numerators and denominators of the rates]* **data—**

(A) Quality indicator *[rates]* **data** shall be in accordance to all HEDIS<sup>®</sup> specifications;

(C) **Each licensed health care plan shall submit, at a minimum, separate quality indicator data files for their commercial, Medicaid and Medicare enrollees.** The quality indicator/s data shall be **submitted to the department in electronic form and** conform to the specifications listed in Table B. **Table B is incorporated herein by reference;** and

(D) In 1998 the data shall be submitted by September 1. In subsequent years *[the]* **a final data file** shall be submitted by June 15 or the date required by NCQA if other than June 15.

(4) Starting in 1998, all commercial health care plans shall submit annually to the department enrollee data for linkage with department data to produce quality indicators—

(A) *[The]* **A final enrollee data file** shall be submitted to the department by September 1, 1998, and by April 1 of each year thereafter, on persons enrolled in a health care plan as of December 31 of the previous year;

(B) **Each licensed health care plan shall submit, at a minimum, a separate enrollee data file for their commercial enrollees.** The enrollee data shall be **submitted in electronic form and** shall *[include the data elements and]* conform to the **file record contents and** specifications listed in Table C of this rule *[and shall be submitted on magnetic media]*. **Table C is incorporated herein by reference.**

(5) In 1998 access to care data shall be submitted by September 1. In subsequent years the data shall be submitted by June 15. Access to care data shall include the data elements and conform to the specifications listed in Table D. **Table D is incorporated herein by reference.**

*AUTHORITY: section 192.068, RSMo [Supp. 1997] Supp. 1999. Emergency rule filed Jan. 16, 1998, effective Jan. 26, 1998, terminated April 15, 1998. Original rule was filed Jan. 16, 1998, effective Aug. 30, 1998. Amended: Filed Oct. 30, 1998, effective May 30, 1999. Amended: Filed Dec. 20, 1999.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than \$500 in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Health, Center for Health Information Management and Epidemiology, Garland Land, Director, P.O. Box 570, Jefferson City, MO 65102, (573) 751-6272. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Table A****Member Satisfaction Survey Data File Specifications****File Content**

Member satisfaction survey data shall be based on the version of the NCQA-required Consumer Assessment of Health Plans Study (CAHPS) Questionnaire, applicable for the reporting year. The data reported to the Department shall include the adult core set of questions, plus any NCQA-mandated or –recommended items for the adult segment of the questionnaire.

**File format and media**

The member satisfaction survey data shall be submitted to the Department electronically as PC ASCII or ANSI files. Other file specifications shall conform to those required by NCQA for submission of the CAHPS Questionnaire results by the certified vendors.

**File consistency**

Plans that elect to submit separate files for sub-groups of their enrollment population must consistently do so for all data submission categories required by this rule.

**Table B**  
**Quality Indicator Data Specifications**  
**Reporting Period: CY1999**

Data reported for each of the indicators listed below shall conform to the NCQA HEDIS Data Submission Tool and all other HEDIS technical specifications for indicator descriptions and calculations. An "X" in the table below indicates data are to be reported for this quality indicator if the health care plan offers this product line to Missouri residents.

Applicable to:

<u>Indicator</u>	<u>Commercial</u>	<u>Medicaid</u>	<u>Medicare</u>
Childhood Immunization Status	X	X	
Adolescent Immunization Status	X	X	
Breast Cancer Screening*	X		X
Cervical Cancer Screening*		X	
Beta Blocker Treatment After Heart Attack	X		X
Comprehensive Diabetes Care	X		X
Antidepressant Medication Management	X	X	X
Annual Dental Visit		X	

\*The plan may elect to use the prior year's data when the indicator is subject to rotation and is off-cycle for NCQA reporting.

File Content

For each of the quality indicators listed above, the plans shall report the following elements from the NCQA HEDIS Data Submission Tool:

1. Data collection methodology (Administrative or Hybrid.)
2. Eligible member population (i.e., members who meet all denominator criteria.)
3. Minimum required sample size (MRSS) or other sample size
4. Number of original sample records excluded because of valid data errors.
5. Number of records excluded because of contraindications identified through administrative data.
6. Number of records excluded because of contraindications identified through medical record review.
7. Additional records added from the auxiliary list.
8. Denominator
9. Numerator events by administrative data
10. Numerator events by medical record
11. Reported rate
12. Lower 95% confidence interval
13. Upper 95% confidence interval

All data elements above shall conform to the HEDIS technical specifications, as outlined in the NCQA-published technical manuals.

**Table B**  
**Quality Indicator Data Specifications**  
**Reporting Period: CY1999**

(continued)

**File format and media**

The quality indicator data shall be submitted hardcopy as well as electronically, in a data file format to be specified by the Department. The file format will be provided to the plans for the option of data entry on diskette using Microsoft Excel or Access software, or on-line data entry to the Department via the Internet. All other data specifications shall conform to those required by NCQA for submission of the audited quality indicator data.

**File Consistency**

Plans that elect to submit separate files for sub-groups of their enrollment population must consistently do so for all data submission categories required by this rule.

Table C

**Health Care Plan - Live Birth Data**

*File Specifications*

**Record Filtering**

This file contains records for female enrollees of the health care plan who delivered a live birth during the reporting year, including those who resided or gave birth outside Missouri. Each live birth shall be reported as a separate record (i.e. separate records shall be submitted for multiple births or for multiple enrollees delivering live births with the same subscriber number).

**File Media**

Live birth data shall be submitted to the Department electronically as PC ANSI or ASCII files.

**File Consistency**

Plans that elect to submit separate files for sub-groups of their enrollment population must consistently do so for all data submission categories required by this rule.

Table C

**Health Care Plan - Live Birth Data***Record Layout***LAYOUT FOR HEADER RECORD**

## Columns

Field Name	Begin	End	Field Length	Data Type	Justify	Fill w/ leading zeroes
Plan Name	1	46	46	C	L	--

**LAYOUT FOR ENROLLEE LEVEL RECORDS**

## Columns

Field Name	Begin	End	Field Length	Data Type	Justify	Fill w/ leading zeroes
Health Care Plan ID	1	5	5	C	L	Y
Plan Type	6	6	1	N	--	
Financial Class Type	7	7	1	N	--	
Type of Coverage	8	8	1	N	--	
Relationship Code	9	10	2	C	--	Y
Subscriber ID	11	21	11	C	L	
Enrollee ID	22	32	11	C	L	
First Name	33	46	14	C	L	
Middle Initial	47	47	1	C	--	
Last Name	48	62	15	C	L	
Enrollee Maiden Name	63	77	15	C	L	
Address1	78	107	30	C	L	
Address2	108	121	14	C	L	
Geocode	122	125	4	C	--	Y
City	126	145	20	C	L	
State	146	147	2	C	L	
Zip Code	148	152	5	C	L	
Enrollee Birth Date	153	160	8	C	--	Y*
Continuous Enrollment	161	161	1	N	--	
Birth Hospital Name	162	181	20	C	L	
Hospital Federal Tax I.D.	182	190	9	N	R	
Hospital Admit Date	191	198	8	C	--	Y*

\* Both month and year. See "Description of File Contents" on the page following for example.

Table C  
Health Care Plan - Live Birth Data  
*Description of File Contents*

Field Name	Field Values
Health Care Plan ID	Five digit code issued by Dept. of Insurance (NAICID) If none issued, use any unique 7 char string
Plan Type	1=HMO    2=POS    3=Other
Financial Class Type	1=Commercial    2=Medicare    3=Medicaid
Type of Coverage	1=Single    2=Family
Relationship Code	Relationship of Birth Mother to Subscriber 01= Subscriber (self) 02= Spouse of Subscriber 03= Child of Subscriber 04= Disabled Dependent
Subscriber ID	Subscriber's SSN in the format XXXXXXXXXX (no dashes). Field should be left justified with leading zeroes retained. If SSN unknown, insert unique Plan ID.
Enrollee ID	Mother's SSN in the format XXXXXXXXXX (no dashes). Field should be left justified with leading zeroes retained. If SSN unknown, insert unique Plan ID.
First Name	First Name of Birth Mother, preferably as given on birth record
Middle Initial	Middle initial of birth mother
Last Name	Last name of birth mother, preferably as given on birth record
Enrollee Maiden Name	Birth Mother's Maiden Name
Address1	House number and Street Name
Address2	Apartment, lot number, etc.
Geocode*	Enrollee city of residence, represented as a four digit Missouri city code, including leading zero(s) Example: Blue Springs = 0425
City	Name of enrollee city of residence
State	Enrollee state of residence, either as two digit FIPS or two character postal abbreviation. Example: Missouri=29 or MO
Zip Code	Five digit postal code. Should crosscheck with city and state. Example: if zip is 63011, city should be 'Ballwin', not 'St. Louis'
Enrollee Birth Date	Birth mother's date of birth in format MMDDYYYY with leading zero(s) retained for month and/or day. Example 010176
Continuous Enrollment**	1=meets criteria    2=does not meet criteria
Birth Hospital Name	Full name of birth hospital
Hospital Federal Tax I.D.	Nine digit tax identification number of the birth hospital. Do not enter a dash.
Hospital Admit Date	Date birth mother was admitted to hospital, in format MMDDYYYY with leading zero(s) retained for month and/or day. Example 010199

\* Data file of geocodes is available for download from the Department, via the Internet at <http://www.health.state.mo.us/ResourceMaterial>

\*\* Continuous enrollment shall be figured in accordance with the current HEDIS specifications for PreNatal Care in the First Trimester.

**Table D****Managed Health Care Services****File Specifications**

Responses to the following questions must be submitted electronically, in a data file format specified by the Department. The file format will be provided to the plans for the option of data entry on diskette using Microsoft Access software, or on-line data entry to the Department via the Internet.

Table D must be completed for each managed care product line (Commercial, Medicaid, or Medicare) offered by each licensed health care plan. Responses should be based on activity or status during the reporting period, within each product line (payor). Survey questions in Table D shall apply except where otherwise noted, only to fully insured (ERISA exempt) enrollments.

Table D  
Managed Health Care Services  
Reporting Period: CY 1999

I. HEALTH PLAN INFORMATION

**Instructions:** Submit one set of Table D information, Parts I and II, for each product line (i.e. type of payor) offered by your organization.

1.) Product Line (CHECK ONE):    ☐ Commercial    ☐ Medicare    ☐ Medicaid

2.) Missouri Department of Insurance Licensed Plan Name:

\_\_\_\_\_ Db (if applicable): \_\_\_\_\_

3.) NAIC Identification Number (5-digit): \_\_\_\_\_

4.) Name as marketed to your members (for Buyer's Guide display purposes):

\_\_\_\_\_

5.) List the following for each of your products within this product line:

Marketed			-----Phone Numbers-----
a.) <u>Product Name</u>	b.) <u>HMO/POS</u>	c.) <u>Customer Service</u>	d.) <u>RN Hotline</u>
_____	_____	_____	_____
_____	_____	_____	_____

6.) Through what organization was your managed care organization accredited as of :

a.) *January 1, 1999?*

Accrediting organization: ☐ NCQA    ☐ URAC    ☐ JCAHO    ☐ None  
Level of Accreditation: \_\_\_\_\_

b.) *December 31, 1999?*

Accrediting organization: ☐ NCQA    ☐ URAC    ☐ JCAHO    ☐ None  
Level of Accreditation: \_\_\_\_\_

7.) What is the Disenrollment Rate\* of this product line?    Numerator \_\_\_\_\_  
= Rate \_\_\_\_\_  
Denominator: \_\_\_\_\_

8.) Managed Care Organization Contact Person for Table D Information:

a.) Name: \_\_\_\_\_ b.) Title: \_\_\_\_\_

c.) Phone: \_\_\_\_\_ d.) Fax: \_\_\_\_\_ e.) E-mail: \_\_\_\_\_

\* Disenrollment Rate: The percent of members enrolled on Dec. 31, 1998, who were not enrolled as of December 31, 1999. Changes in product type or payee type, or any gaps in enrollment during 1999 should not be counted as disenrolled.

**Table D**  
**Managed Health Care Services**  
**Reporting Period: CY 1999**

## II. HEALTH PLAN SERVICES

1.) Please indicate for each of the following high risk conditions/diseases, if your managed care plan (A) has screening mechanisms, (B) provides case management, and (C) provides specific educational materials to persons-at-risk: **(CHECK ALL THAT APPLY)**

<u>High Risk Conditions/Diseases</u>	<u>(A) Screening Mechanisms</u>	<u>(B) Case Management</u>	<u>(C) Education for Persons-at-risk</u>
Asthma	( )	( )	( )
Stroke/Cardiovascular Disease	( )	( )	( )
Breast Cancer	( )	( )	( )
Cervical Cancer	( )	( )	( )
Ovarian Cancer	( )	( )	( )
Congestive Heart Failure (CHF)	( )	( )	( )
Chronic Obstructive Pulmonary Disease	( )	( )	( )
Diabetes	( )	( )	( )
Depression	( )	( )	( )
HIV	( )	( )	( )
Sickle Cell Anemia	( )	( )	( )
High Risk Pregnancy	( )	( )	( )
Obesity	( )	( )	( )
Tobacco Use	( )	( )	( )
Multiple Illnesses	( )	( )	( )
Chronic Diseases	( )	( )	( )
Other _____ (PLEASE SPECIFY)	( )	( )	( )

2.) Please indicate if your managed care plan provides any of the following:

- a.) Routine distribution of educational materials  
on general health promotion, disease prevention  
and wellness ( ) YES      ( ) NO
- b.) Information sent to all plan enrollees which  
addresses some or all of the high-risk conditions/  
diseases listed in Question 1. ( ) YES      ( ) NO
- c.) Distribution of pre- and post-surgical  
information to enrollees ( ) YES      ( ) NO

**3a.) Commercial/Medicaid only (If completing for a Medicare plan, skip to Question 3b)**

**Do you send reminder/recall letters and/or make telephone calls from your managed care plan office to your members to ensure usage of the following preventive services?**

<b>Mammograms</b>	<b>( ) YES</b>	<b>( ) NO</b>
<b>Immunizations</b>	<b>( ) YES</b>	<b>( ) NO</b>
<b>Pap smears</b>	<b>( ) YES</b>	<b>( ) NO</b>
<b>Diabetic Screens/Tests</b>	<b>( ) YES</b>	<b>( ) NO</b>

**3b.) Medicare only**

**Do you send reminder/recall letters and/or make telephone calls from your managed care plan office to your members to ensure usage of the following preventive services?**

<b>Mammograms</b>	<b>( ) YES</b>	<b>( ) NO</b>
<b>Immunizations</b>	<b>( ) YES</b>	<b>( ) NO</b>
<b>Well-woman checks</b>	<b>( ) YES</b>	<b>( ) NO</b>
<b>Diabetic Screens/Tests</b>	<b>( ) YES</b>	<b>( ) NO</b>

**4a.) Commercial/Medicaid only (If completing for a Medicare plan, skip to Question 4b)**

**Do you provide reminder/recall letters for your providers to use to notify your enrollees of the following preventive services?**

<b>Mammograms</b>	<b>( ) YES</b>	<b>( ) NO</b>
<b>Immunizations</b>	<b>( ) YES</b>	<b>( ) NO</b>
<b>Pap smears</b>	<b>( ) YES</b>	<b>( ) NO</b>
<b>Diabetic Screens/Tests</b>	<b>( ) YES</b>	<b>( ) NO</b>

**4b.) Medicare only**

**Do you provide reminder/recall letters for your providers to use to notify your enrollees of the following preventive services?**

<b>Mammograms</b>	<b>( ) YES</b>	<b>( ) NO</b>
<b>Immunizations</b>	<b>( ) YES</b>	<b>( ) NO</b>
<b>Well-woman checks</b>	<b>( ) YES</b>	<b>( ) NO</b>
<b>Diabetic Screens/Tests</b>	<b>( ) YES</b>	<b>( ) NO</b>

**5.) Does your plan routinely conduct continuing education sessions with your providers to improve their knowledge on current clinical practice recommendations?**

**( ) YES      ( ) NO**

6.) Does your managed care plan provide a RN hotline for your members?

☐ YES, for all products      ☐ YES, for some products      ☐ NO

7.) During the reporting period, did your plan provide coverage to your non-ASO members for the following health benefits? Please indicate if the benefit item was offered as standard coverage for all non-ASO products within the product line (commercial, Medicaid or Medicare), as standard coverage only for some non-ASO products in the product line, offered only by rider clause, or not covered at all. (CHECK ONLY ONE FOR EACH BENEFIT LISTED)

	Non-ASO Product Only			
	<u>All Products</u>	<u>Some Products</u>	<u>Offered only by rider clause</u>	<u>Not Offered</u>
Rx coverage of prenatal vitamins, including folic acid.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Contraceptives:				
Birth control pills.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
IUDs.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Norplant.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Depo Provera.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Annual eye exam for refractive errors.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Autologous bone marrow transplants.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stem cell rescue for breast cancer.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access to chiropractic services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Access to podiatric services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unrestricted approval for annual flu shots.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Smoking cessation classes <u>or</u> cessation medications..	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Routine physical exams....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pap smears.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Conduct wellness surveys	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

8.) During the reporting period, did your plan manage the following health services for your ASO group contracts? For each of the health services listed below, please indicate if it was elected as a covered benefit in all the ASO contracts with your plan, in some of the ASO contracts, or in none of the ASO contracts. (CHECK ONE COLUMN ONLY) Also indicate the proportion of your total ASO member enrollment who have coverage for the health service.

	Selected Covered Benefits:			Percent of ASO Enrollment Covered
	All Contracts	Some Contracts	None of the Contracts	
Immunizations.....	( )	( )	( )	_____
Mammograms .....	( )	( )	( )	_____
Pap Smear .....	( )	( )	( )	_____

9.) For each preventive service listed below, please indicate if, during the reporting year, your plan (A) requires physicians to provide you their practice profile or (B) provides the individual practice profiles to the physicians. In column (C) indicate if you sent comparative profile information to the physicians.

	(CHECK "A" OR "B")    (CIRCLE Y or N)		
	(A) Physicians Provide Profiles	(B) Plan Provides Profiles	(C) Plan Sends Comparative Profile Data
Childhood Immunizations.....	( )	( )	Y/N
Adolescent Immunizations.....	( )	( )	Y/N
Breast Cancer Screenings.....	( )	( )	Y/N
Pap Smears.....	( )	( )	Y/N
Beta Blocker Treatment After Heart Attack.....	( )	( )	Y/N
Comprehensive Diabetic Care:			
Hemoglobin Testing.....	( )	( )	Y/N
Retinal Disease Eye Exam.....	( )	( )	Y/N
LDL-C (Lipids) Testing .....	( )	( )	Y/N
Nephropathy Screenings.....	( )	( )	Y/N
Annual Flu Shots for Older Adults.....	( )	( )	Y/N
Tobacco Cessation Counseling.....	( )	( )	Y/N
Other (Please specify)_____	( )	( )	Y/N

10.) Please indicate the administrative policies for your plan, as they applied to your non-ASO members during the reporting year. (CHECK A RESPONSE FOR EACH POLICY LISTED)

	YES All <u>Products</u>	YES Some <u>Products</u>	NO No Plan <u>Products</u>
a.) Allow access to OB/GYNs other than the once per year visit without referral	( )	( )	( )
b.) Patient must see PCP for referral to any specialist	( )	( )	( )
c.) PCP must contact HMO or its agency for referral to any specialist	( )	( )	( )
d.) Members can access non-OB/GYN in-network specialist without referral or prior authorization	( )	( )	( )
e.) Allow specialists other than OB/GYN to be designated as PCP for patients with chronic disease	( )	( )	( )

11.) For each procedure category listed below, please provide the hospital identifier information and the number of procedures performed on your plan members during the reporting period for the facilities in your plan network. Use additional data entry lines, as necessary.

<u>Procedure/ICD9-CM Code</u>	<u>Hospital Name</u>	<u>Federal ID #</u>	<u>Px #</u>
Cardiac Catheterization			
(37.21-37.23)	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
	6. _____	_____	_____
	7. _____	_____	_____
	8. _____	_____	_____
	9. _____	_____	_____
	10. _____	_____	_____

<u>Procedure/ICD9-CM Code</u>	<u>Hospital Name</u>	<u>Federal ID #</u>	<u>Px #</u>
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**Cardiac Angiography**  
**(88.55-88.57)**

1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

**Coronary Artery Bypass Graft**  
**(36.1, 36.2)**

1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

**Total Hip Replacement**  
**(81.51, 81.53)**

1.			
2.			
3.			
4.			
5.			

<u>Procedure/ICD9-CM Code</u>	<u>Hospital Name</u>	<u>Federal ID #</u>	<u>Px #</u>
<b>Total Hip Replacement (continued)</b>	6. _____	_____	_____
	7. _____	_____	_____
	8. _____	_____	_____
	9. _____	_____	_____
	10. _____	_____	_____
<b>Prostatectomy (60.21, 60.29, 60.3-60.5 60.61, 60.62, 60.69)</b>	1. _____	_____	_____
	2. _____	_____	_____
	3. _____	_____	_____
	4. _____	_____	_____
	5. _____	_____	_____
	6. _____	_____	_____
	7. _____	_____	_____
	8. _____	_____	_____
	9. _____	_____	_____
	10. _____	_____	_____

**Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN**

**Division 10—Health Care Plan  
Chapter 2—Plan Options**

**PROPOSED AMENDMENT**

**22 CSR 10-2.010 Definitions.** The board is amending section (1).

*PURPOSE: This amendment includes changes in the definitions made by the board of trustees regarding the key terms within the Missouri Consolidated Health Care Plan.*

(1) When used in this plan document, these words and phrases have the meaning—

(HH) Plan document—This statement of the terms and conditions of the plan *[revised and effective January 1, 1995,]* as adopted by the plan administrator;

(MM) Prior plan—The terms and conditions of a plan in effect for *[a/ the period preceding [January 1, 1995] coverage in the MCHCP;*

(PP) Review agency—A company responsible for administration of *[the four (4) components of the Health Check program under the direction of the claims administrator] clinical management programs;*

*AUTHORITY: section 103.059, RSMo 1994. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. Amended: Filed Dec. 6, 1999.*

*PUBLIC COST: This proposed amendment is estimated to cost state agencies and political subdivisions less than \$500 in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, P.O. Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN**

**Division 10—Health Care Plan  
Chapter 2—Plan Options**

**PROPOSED AMENDMENT**

**22 CSR 10-2.020 Membership Agreement and Participation Period.** The board is amending sections (1), (3) and (4) and removing forms that follow the rule from the *Code of State Regulations*.

*PURPOSE: The amendment includes changes and clarifications made by the board of trustees regarding the employee's membership agreement and membership period for participation in the Missouri Consolidated Health Care Plan.*

(1) The application packet and confirmation notice shall comprise the membership agreement between a public entity and the Missouri Consolidated Health Care Plan (MCHCP).

(A) By applying for coverage under the MCHCP a public entity agrees that—

1. For groups of less than five hundred (500) employees, the MCHCP will be the only health care offering made to its eligible members. For groups of five hundred (500) or more employees the entity may maintain a self-insured indemnity plan or one point-of-service (POS) option (either self-insured or on a fully-insured directly contracted basis), but may not offer a competing plan of the same type through the MCHCP (also see paragraph (1)(A)8.);

2. It will contribute at least twenty-five dollars (\$25) per month toward each active employee's premium;

3. Individual and family deductibles, if appropriate, will be applied. Deductibles previously paid to meet the requirements of the terminating plan may be credited for those joining one of the indemnity options. Appropriate proof of said deductibles will be required;

4. Eligible members joining the MCHCP who were covered by any medical plan offered by the public entity or an individual policy will not be subject to any pre-existing condition;

5. Eligible members joining the MCHCP at the time of the initial eligibility of the public entity will not have to prove insurability;

6. For groups contracting only with the MCHCP, at least seventy-five percent (75%) of all eligible employees must join the MCHCP. For groups of five hundred (500) employees or more that choose one (1) of the alternative options identified in paragraph (1)(A)1., the entity must maintain seventy-five percent (75%) coverage of all their employees covered through all of their offerings;

7. An eligible employee is one that is not covered by another group sponsored plan;

8. *[Public entities joining the plan will be able to select whatever plans they wish from those available through the MCHCP to be offered to their eligible members] Public entities joining the MCHCP must allow their eligible subscribers the option of choosing the managed health care plans that are available through the MCHCP that are licensed in a county in which the subscriber either lives or works;*

9. Any individual eligible as an employee may be covered as either an employee or dependent, but not both. Employees enrolled as dependents will not be considered as eligible employees in consideration of section (6); and

10. A public entity may apply a probationary period, not to exceed applicable federal guidelines, before benefits become effective.

(3) The participation period shall begin on the participant's effective date in the plan. Participation shall continue until this plan or coverage in this rule is terminated for any reason. However, transfer from the prior plan to this plan will be automatic upon the effective date of this plan *[, except that any participant confined to a hospital on the effective date of this plan shall be continued under the prior plan until discharged from the hospital].*

(4) The effective date of participation shall be determined, subject to the effective date provision in subsection (4)(C), as follows:

(B) Dependent Coverage. Dependent participation cannot precede the employee's participation. Application for participants must be made in accordance with the following provisions. For family coverage, once an employee is participating with respect to dependents, newly acquired dependents are automatically covered on their effective dates as long as the plan administrator is notified within thirty-one (31) days of the person becoming a dependent. The employee is required to notify the plan administrator on the

appropriate form of the dependent's name, date of birth, eligibility date and Social Security number, if available. Claims will not be processed until the required information is provided—

1. If an employee makes concurrent application for dependent participation on or before the date of eligibility or within thirty-one (31) days thereafter, participation for dependent will become effective on the date the employee's participation becomes effective;

2. When an employee participating in the plan first becomes eligible with respect to a dependent child(ren), coverage may become effective on the eligibility date or the first day of the month coinciding with or following the date of eligibility if application is made within thirty-one (31) days of the date of eligibility and provided any required contribution for the period is made; and

3. Unless required under federal guideline—

A. An emancipated dependent who regains his/her dependent status is not eligible for coverage until the next open enrollment period; and

B. An eligible dependent that is covered under a spouse's health plan who loses eligibility under the criteria stipulated for dependent status under the spouse's health plan is not eligible for coverage until the next open enrollment period. (Note: Subparagraphs (4)(B)3.A. and B. do not include dependents of retirees or long-term disability members covered under the plan);

(C) Effective Date *Proviso*.

1. In any instance when the employee is not actively working full-time on the date participation would otherwise have become effective, participation shall not become effective until the date the employee returns to full-time active work. However, this provision shall not apply for public entities (or any individual who is a member of that public entity) when the MCHCP is replacing coverage for that public entity[.];

[2. If any dependent, other than a newborn child, is confined in a hospital on the date participation with respect to dependent coverage would otherwise become effective, participation shall become effective on the day after the date of discharge from the hospital; and]

(D) Application for dependent coverage may be made at other times of the year when the spouse's, ex-spouse's (who is the natural parent providing coverage), or legal guardian's: 1) employment is terminated or is no longer eligible for coverage under his/her employer's plan, or 2) employer-sponsored medical plan is terminated. With respect to dependent child(ren) coverage, application may also be made at other times of the year when the member receives a court order stating s/he is responsible for providing medical coverage for the dependent child(ren) or when the dependent loses Medicaid coverage. Dependents added under any of these exceptions must supply verification from the previous insurance carrier or the member's employer that they have lost coverage and the effective date of termination. Coverage must also be requested within sixty (60) days from the termination date of the previous coverage. With respect to dependent child(ren) coverage, application may also be made at other times of the year when the member receives a court order stating s/he is responsible for providing medical coverage for the dependent child(ren). **Application must be made within sixty (60) days of the court order.** (Note: This section does not include dependents of retirees or long-term disability recipients covered under the plan[.]); and

(E) When an employee experiences applicable life events, eligibility will be administered according to Health Insurance Portability and Accountability Act (HIPAA) guidelines.

*AUTHORITY:* section 103.059, RSMo 1994. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Dec. 6, 1999,

effective Jan. 1, 2000, expires June 28, 2000. Amended: filed Dec. 6, 1999.

*PUBLIC COST:* This proposed amendment is estimated to cost state agencies or political subdivisions less than \$500 in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, P.O. Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

## Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN

### Division 10—Health Care Plan Chapter 2—Plan Options

#### PROPOSED AMENDMENT

**22 CSR 10-2.040 Indemnity Plan Summary of Medical Benefits.** The board is amending sections (1), (3), (4), (7) and (9).

*PURPOSE:* This amendment includes changes made by the board of trustees regarding medical benefits for participants in the Missouri Consolidated Health Care Plan.

(1) Lifetime maximum, [one (1)] **three (3)** million dollars.

(3) Deductible Amount—Per individual for the indemnity plan [and the limited indemnity plan] each calendar year, three hundred dollars (\$300), family limit each calendar year, nine hundred dollars (\$900).

(4) [Copayment] **Coinsurance.**

(C) [Limited Indemnity Plan] **Non-Network Services**—Same as subsections (4)(A) and (B), except covered charges are reimbursed on a seventy percent (70%) basis.

(7) [Health Check] **Clinical Management**—Certain benefits are subject to a utilization review (UR) program. The program consists of four (4) parts, as described in the following:

(9) Prescription Drug Program—The indemnity plan provides [a carve-out program for prescription drugs. The program consists of] coverage for maintenance and nonmaintenance medications, as described in the following:

[ (A) **Nonmaintenance Medications**—For those prescription drugs needed for short-term use only, the member will be responsible for twenty percent (20%) of a discounted rate after satisfaction of the twenty-five dollar (\$25) individual deductible (seventy-five dollars (\$75) maximum family deductible).

1. The prescription must be written for less than a thirty (30)-day supply.

2. If the member chooses a brand name medication when there is a generic available, s/he will be responsible for twenty percent (20%) of the generic medication's cost (after satisfaction of the deductible), as well as the difference between the cost of the brand name medication and the generic medication. This difference does not apply to the out-of-pocket maximum. This provision does not apply if the doctor has indicated on the prescription that the brand name is necessary.

(B) *Maintenance Medications*—For those medications listed on the maintenance medication list, as determined by the claims administrator, the member will be responsible for a fifteen-dollar (\$15) copayment for each brand name medication and a five-dollar (\$5) copayment for each generic medication.

1. The prescription must be written for a thirty to ninety (30–90)-day supply.

2. Maintenance medications may be purchased from either a participating local pharmacy or the mail order facility.

3. Unless an exception is approved by the drug/claims administrator for a medically necessary reason, oral contraceptives must be obtained from an approved formulary list.

(C) *Out-of-Pocket Maximum*—There is a maximum out-of-pocket (including deductibles) of four hundred dollars (\$400) per individual, with a maximum family out-of-pocket of twelve hundred dollars (\$1200). The out-of-pocket maximum applies to both maintenance and nonmaintenance medications. Once a member has reached the four hundred dollar (\$400)-maximum his/her covered drugs will be covered at 100% for the remainder of the calendar year.]

**(A) Nonmaintenance Medications.**

**1. In-Network.**

A. \$5 Copay for 30-day supply for generic drug on the formulary.

B. \$10 Copay for 30-day supply for brand drug on the formulary.

C. \$15 Copay for 30-day supply for non-formulary drug.

2. Non-network. The deductible will apply. After satisfaction of the deductible, claims will be paid at fifty-percent (50%) coinsurance. Charges will not be applied to the out-of-pocket maximum.

(B) *Maintenance Medications*. Prescriptions may be filled through a mail order program for up to a ninety (90)-day supply for twice the regular copayment for a drug on the maintenance list.

[[D]] (C) *Nonparticipating Pharmacies*—]. If a member chooses to use a nonparticipating pharmacy, s/he will be required to pay the full cost of the prescription, then file a claim with the prescription drug administrator. S/he will be reimbursed the amount that would have been allowed at a participating pharmacy, less any applicable deductibles or coinsurance. Any difference between the amount paid by the member at a nonparticipating pharmacy and the amount that would have been allowed at a participating pharmacy will not be applied to the out-of-pocket maximum.

*AUTHORITY: section 103.059, RSMo 1994. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. Amended: Filed Dec. 6, 1999.*

*PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than \$500 in the aggregate.*

*PRIVATE COST: There is a potential for some individual members to incur additional costs in excess of \$500 due to the changes in some of the covered benefits and/or the copayment levels. These could be either state members or individuals enrolled through the public entities. Please see attached fiscal note for estimated cost.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, P.O. Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**FISCAL NOTE  
PRIVATE ENTITY COST****V. RULE NUMBER**Title: 22 – Missouri Consolidated Health Care PlanChapter: Chapter 10Type of Rulemaking: Proposed Amendment to RuleRule Number and Name: 2.040 Indemnity Plan Summary of Medical Benefits**VI. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Percentage using pharmacy of the 3,759 members	Individuals enrolled in the MCHCP in the PPO	\$504,000

**VII. WORKSHEET**

The cost for pharmacy in the health benefit plan has been increasing at a far greater rate than any other benefit. Consequently, the plan design for many programs is being modified to counter an increase in the cost and utilization in this area.

The MCHCP will be implementing a three-tiered benefit design. Under this arrangement, the member will pay the following:

\$5 for a generic prescription on the formulary  
\$15 for a brand prescription on the formulary  
\$25 for a non-formulary drug

If a non-network pharmacy is utilized, the deductible will apply, claims will be paid at 50% coinsurance and the charges will not be applied to the out-of-pocket maximum.

The current design calls for a separate \$25 deductible, 20% coinsurance and a \$400 out-of-pocket maximum. Drugs obtained at non-network pharmacies are paid at the network level.

**VIII. ASSUMPTIONS**

It is estimated that the change in coverage for this benefit will be approximately 4.8% of the total premium. Consequently, it is anticipated that, on average, each member would pay approximately an additional \$134 per year. This is an estimated annual total cost of \$504,466.

However, some of this cost could be offset by the savings incurred by the increase in the allowable lifetime maximum and/or the increased coverage in the mental health/substance abuse benefit.

**Title 22—MISSOURI CONSOLIDATED HEALTH  
CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—Plan Options**

**PROPOSED AMENDMENT**

**22 CSR 10-2.050 Indemnity Plan Benefit Provisions and Covered Charges.** The board is amending subsection (2)(C).

*PURPOSE: The amendment includes changes made by the board of trustees regarding benefit provisions and covered charges in the Missouri Consolidated Health Care Plan.*

**(2) Covered Charges.**

(C) Covered charges are divided into mutually exclusive types and each covered charge shall be deemed to be covered on the date the medical benefit, service or supply is received.

1. Type A charges for hospital daily room and board and routine nursing. The maximum covered charge for a private room is the hospital's most common semiprivate room rate unless a private room is recommended by a physician and approved by the claims administrator or the plan's medical review agency.

2. Type B charges for intensive care, concentrated care, coronary care or other special hospital unit designed to provide special care for critically ill or injured patients.

3. Type C charges for preadmission testing (X-ray and laboratory tests) which are conducted and which are necessary for hospital admission and which are not duplicated for screening purposes upon admission to the hospital.

4. Type D special hospital charges for inpatient medical care and supplies received during any period room and board charges are made except—

A. Those included in paragraphs (2)(C)1.-3.; and

B. Special nursing care.

5. Type E charges for outpatient medical care or supplies.

6. Type F surgery and anesthesia charges of a provider for the giving of anesthesia not included in paragraphs (2)(C)4. and 5.

7. Type G psychiatric service charges of a provider licensed to provide services which relate to care of mental conditions.

8. Type H professional service charges not included in paragraphs (2)(C)2.-7. made by a provider or by a laboratory for diagnostic laboratory and X-ray exams.

9. Type I nursing services of a registered nurse (RN), licensed practical nurse (LPN) or licensed vocational nurse (LVN) on his/her own behalf.

10. Type J professional service charges of a licensed physical therapist, occupational therapist, audiologist or respiratory therapist, subject to medical necessity review by claims administrator.

11. Type K transportation charges not included in paragraphs (2)(C)3. and 4. for professional air or ground ambulance services for local transportation to and from a hospital, from a hospital to and from a local facility which provides specialized testing or treatment or from a hospital to a skilled nursing facility; and charges for travel within the United States by a scheduled railroad, airline or ambulatory carrier to, but not back from, the nearest hospital equipped to furnish needed special treatment.

12. Type L charges for orthopedic or prosthetic devices and hospital-type equipment not included in paragraphs (2)(C)4. and 5. for—

A. Man-made limbs or eyes for the replacing of natural limbs or eyes;

B. Casts, splints or crutches;

C. Purchase of a truss or brace as a direct result of—

(I) An injury or sickness which began while covered under these rules; or

(II) A disabling condition existing since birth;

D. Oxygen and rental of equipment for giving oxygen; rental of wheelchair or scooter (manual or powered) or hospital equipment to aid in breathing;

E. Dialysis equipment rental, supplies, upkeep and the training of the participant or an attendant to run the equipment; [and]

F. Colostomy bags and ureterostomy bags[.];

G. Bilateral hearing aids; and

H. Augmentative communication devices.

13. Type M charges for prescription drugs from a licensed pharmacist or for anesthesia when given by a provider if not included in paragraphs (2)(C)3.-6.

14. Type N charges for skilled nursing care including room and board when the stay is medically necessary, as determined by the claims administrator.

15. Type O charges for the services of a licensed speech therapist if the charges are made for speech therapy used for the purpose of correcting speech loss or damage which—

A. Is due to a sickness or injury, other than a functional nervous disorder or surgery due to such sickness or injury; or

B. Follows surgery to correct a birth defect.

16. Type P charges for services and supplies from a home health care agency which are medically necessary, as determined by the claims administrator.

17. Type Q charges for outpatient treatment of mental and nervous conditions.

18. Type R charges for outpatient treatment of alcohol and drug abuse.

19. Type S charges for hospice services.

20. Type T charges for education and training if it will promote the patient to a lower level of medical/nursing care.

21. Type U charges for surgical and medical procedures performed by a podiatrist.

22. Type V charges for transplants.

23. Type W charges for services rendered by a physician or other provider.

**24. Type Y charges for normally covered services arising from a noncovered service.**

*AUTHORITY: section 103.059, RSMo 1994. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. Amended: Filed Dec. 6, 1999.*

*PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than \$500 in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than \$500 in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, P.O. Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 22—MISSOURI CONSOLIDATED HEALTH  
CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—Plan Options**

**PROPOSED AMENDMENT**

**22 CSR 10-2.060 Indemnity Plan Limitations.** The board is amending section (1).

**PURPOSE:** *This amendment includes changes made by the board of trustees regarding limitations for participants in the Missouri Consolidated Health Care Plan Indemnity Plan.*

(1) Benefits shall not be payable for, or in connection with, any medical benefits, services or supplies which do not come within the definition of covered charges, or any of the following:

(C) Cosmetic, plastic, reconstructive or restorative surgery performed for the purpose of improving appearance unless such expenses are incurred for repair of a disfigurement caused from any of the following:

1. An accidental injury which was sustained while covered under these rules;

2. A sickness first manifested while covered under these rules;

3. Any other accidental injury or sickness but only for expenses incurred after this coverage has been in force for at least *[twelve (12)] six (6)* months; or

4. A birth defect;

(D) Hearing aids **once every two (2) years** and the fitting, eye refractions and glasses, contact lenses or their fitting of eye glasses or contact lenses (other than the first pair of contact lenses or eye glasses or the fitting after cataract surgery which is performed while covered under these rules);

(H) *[To the extent provided by law, intentionally self-inflicted injury or illness, or i]*Injury or sickness resulting from taking part in the commission of a felony;

(M) Except as may otherwise be specifically provided, expenses for equipment, services or supplies for any of the following, regardless of whether or not prescribed by a physician or provider:

1. Experimental/investigational procedures, as defined in the claims administrator's guidelines;

2. Exercise for the eyes;

3. Psychological testing;

4. Nerve stimulators with the exception of transcutaneous electrical nerve stimulator (TENS) units;

5. Any treatment of obesity due solely to overeating;

6. Custodial care;

7. *[In vitro and i]*In vivo artificial insemination **including gamete intrafallopian transfer/zygote intrafallopian transfer (GIFT/ZIFT)**;

8. Travel (see subsection (1)(EE)), lodging (see subsection (1)(EE)), recreation or exercise;

9. Air conditioners, purifiers or humidifiers;

10. Nonprescription drug items (except insulin and other diabetic supplies); and

11. Acupuncture, acupressure, and biofeedback;

(R) *[Alcohol]* **Outpatient alcohol** and drug abuse treatments are limited to—*[two (2) inpatient treatments per lifetime, the copayment does not apply to the out-of-pocket maximum and there is a lifetime maximum of fifty thousand dollars (\$50,000)].*

1. *Network provider—up to thirty (30) days per calendar year paid at ninety percent (90%). In addition to three hundred dollar (\$300)-medical deductible, there is also a one hundred dollar (\$100) per day deductible for up to five (5) days.*

2. *Non-network provider—up to thirty (30) days per calendar year paid at seventy percent (70%). In addition to three hundred dollar (\$300)-medical deductible, there is also a one hundred fifty dollar (\$150)-deductible for up to five (5) days;]*

1. **Network provider.**

A. **First five (5) visits paid with a ten-dollar (\$10) copayment.**

B. **Visit six (6) through ten (10) with a fifteen-dollar (\$15) copayment.**

C. **Additional visits paid with a twenty-dollar (\$20) copayment.**

2. **Non-network provider.**

A. **Subject to deductible and fifty percent (50%) coinsurance;**

*[(S)] Inpatient mental illness services are limited to thirty (30) days per year, and the copayment does not apply to the out-of-pocket maximum.*

1. *Network provider—paid at ninety percent (90%).*

2. *Non-network provider—paid at seventy percent (70%).*

3. *Partial day treatment—including acute day treatment and partial hospitalization. Treated as one-half (1/2) inpatient day toward thirty (30)-day maximum.*

A. *Network provider—paid at ninety percent (90%).*

B. *Non-network provider—paid at seventy percent (70%).]*

*[(T)] (S) Outpatient mental illness services are limited to—[fifty (50) visits per year. The copayment does not apply to the out-of-pocket maximum.]*

1. **Network provider.**

A. **First five (5) visits paid [at ninety percent (90%)] with a ten-dollar (\$10) copayment.**

B. **Visit six (6) through [twenty (20) paid at seventy percent (70%)] ten (10) with a fifteen-dollar (\$15) copayment.**

C. **[Visit twenty-one through fifty (21–50) paid at fifty percent (50%).] Additional visits paid with a twenty-dollar (\$20) copayment.**

2. **Non-network provider.**

A. **[First five (5) visits paid at seventy percent (70%).]**

B. **Visit six through twenty (6–20) paid at fifty percent (50%).]**

C. **Visit twenty-one through fifty (21–50) paid at fifty percent (50%).] Subject to deductible and fifty percent (50%) coinsurance;**

**[3. Intensive outpatient services.**

A. **Network provider paid at ninety percent (90%).**

B. **Non-network provider paid at seventy percent (70%).]**

*[(U)] (T) Marital and family counseling for group or individual psychotherapy;*

*[(V)] (U) Chiropractic services are limited to a maximum allowable charge of fifty dollars (\$50) per visit, and a two thousand-dollar (\$2,000) total annual maximum. Diagnostic lab and X-ray services are not included in fifty-dollar (\$50) maximum per visit, but are included in two thousand-dollar (\$2,000) total annual maximum;*

*[(W)] (V) Associated charges for noncovered services;*

*[(X)] (W) Any services not specifically included as a covered benefit;*

*[(Y)] (X) Vitamins and nutrient supplements, except prescription prenatal vitamins, vitamin B<sub>12</sub> shots, and certain vitamin therapies as determined by the claims administrator;*

*[(Z)] (Y) Treatment of temporal mandibular joint dysfunction (TMJ) will be covered under the plan up to maximum reimbursement of five hundred dollars (\$500) per lifetime;*

*[(AA)] (Z) Reversals of tubal ligations and vasectomies;*

*[(BB)] Cardiac rehabilitation treatments are limited to thirty-six (36) visits per calendar year;]*

*[(CC)] (AA) X-ray and office charges associated with flat feet;*

*[(DD)] (BB) Preferred Provider Organization (PPO) office visit copayments; [and]*

*[(EE)] (CC) Transplants are limited to heart, lung, liver, kidney, cornea, [and] bone marrow, **pancreas and intestinal**, and are subject to medical necessity and effectiveness criteria and payment levels as determined by the claims administrator's guidelines. Benefits are limited to one hundred fifty thousand dollars (\$150,000) for services associated with the admission of the actual organ transplant with remainder of transplant cost applied to one (1) million dollar lifetime maximum.];*

Benefits are allowed in accordance with the following schedule:				
Benefit Description	The First Health National Transplant Program	First Health Network (PPO) Hospital	Non-PPO Hospital	Additional Limitations and Explanations
Plan Pays	100%	90% of NTP fees	70%* of NTP fees	Travel, lodging and meals allowance is for the transplant recipient and his or her immediate family travel companion (under age 19, both parents). The plan's copayment will be reduced by 10% when not using The First Health National Transplant Program if you do not follow the procedures required by the clinical management services program. This penalty and your non-PPO coinsurance do not apply to the out-of-pocket maximum.
Annual Deductible	NO	YES	YES	
Organ Donor Costs Per Transplant	Unlimited	\$10,000	\$10,000	
Travel, Lodging and Meals Allowance Per Transplant	\$10,000	None	None	
Lifetime benefit Maximum	Subject to Plan Maximum	Subject to Plan Maximum	Subject to Plan Maximum	

[(FF)] (DD) Skilled nursing charges limited to one hundred twenty (120) days per calendar year[.];

(EE) *In vivo* artificial insemination subject to deductible and fifty percent (50%) coinsurance, which does not apply to the out-of-pocket maximum. Not covered out-of-network;

(FF) Eye refractions limited to one (1) annually and only if provided in the network; and

(GG) Treatment of nearsightedness, farsightedness and astigmatism.

*AUTHORITY:* section 103.059, RSMo 1994. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. Amended: Filed Dec. 6, 1999.

*PUBLIC COST:* This proposed amendment is estimated to cost state agencies or political subdivisions less than \$500 in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, P.O. Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

## Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN

### Division 10—Health Care Plan Chapter 2—Plan Options

#### PROPOSED AMENDMENT

**22 CSR 10-2.063 HMO/POS/POS98 Summary of Medical Benefits.** The board is amending subsection (1)(Z).

*PURPOSE:* This amendment includes changes made by the board of trustees regarding the medical benefits of the HMO/POS and POS98 plans in the Missouri Consolidated Health Care Plan Indemnity Plan.

(1) Covered Charges.

(Z) Prescription Drugs—[Maximum thirty (30)-day supply, five dollar (\$5) copayment]. Insulin, syringes, test strips and glucometers are included in this coverage. [Additional restrictions may apply for use of nonformulary medication with HMO/POS. POS98 lessor of twenty dollar (\$20) copayment or cost of drug for nonformulary drug.] There is no out-of-pocket maximum. Member is responsible only for the lesser of the applicable copayment or the cost of the drug.

1. Five-dollar (\$5) copay for thirty (30)-day supply for generic drug on the formulary.

2. Ten-dollar (\$10) copay for thirty (30)-day supply for brand drug on the formulary.

3. Fifteen-dollar (\$15) copay for thirty (30)-day supply for nonformulary drug.

*AUTHORITY:* section 103.059, RSMo 1994. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Original rule filed Dec. 21, 1994, effective June 30, 1995. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. Amended: Filed Dec. 6, 1999.

*PUBLIC COST:* This proposed amendment is estimated to cost state agencies or political subdivisions less than \$500 in the aggregate.

*PRIVATE COST:* There is a potential for some individual members to incur additional costs in excess of \$500 due to the changes in some of the covered benefits and/or the copayment levels. These could be either state members or individuals enrolled through the public entities. Please see attached fiscal note for estimated cost.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, P.O. Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**FISCAL NOTE  
PRIVATE ENTITY COST****I. RULE NUMBER**Title: 22 – Missouri Consolidated Health Care PlanChapter: Chapter 10Type of Rulemaking: Proposed Amendment to RuleRule Number and Name: 2.063 HMO/POS/POS98 Summary of Medical Benefits**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Percentage using pharmacy of the 104,714 members	Individuals enrolled in the MCHCP in an HMO/POS	\$8.34 million

**III. WORKSHEET**

The cost for pharmacy in the health benefit plan has been increasing at a far greater rate than any other benefit. Consequently, the plan design for many programs is being modified to counter an increase in the cost and utilization in this area.

The MCHCP will be implementing a three-tiered benefit design. Under this arrangement, the member will pay the following:

\$5 for a generic prescription on the formulary  
\$15 for a brand prescription on the formulary  
\$25 for a non-formulary drug

The current design is \$5 for any drug on the formulary. The benefit for non-formulary drugs varies by plan.

**IV. ASSUMPTIONS**

It is estimated that the change in coverage for this benefit will be approximately 4.8% of the total premium. Consequently, it is anticipated that, on average, each member would pay approximately an additional \$80 per year. This is an estimated annual total cost of \$8.34 million.

**Title 22—MISSOURI CONSOLIDATED HEALTH  
CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—Plan Options**

**PROPOSED AMENDMENT**

**22 CSR 10-2.075 Review and Appeals Procedure.** The board is amending subsection (5)(D).

*PURPOSE:* This amendment includes changes made by the board of trustees regarding the review and appeals procedure for participants in the Missouri Consolidated Health Care Plan.

(5) All insured members of the Missouri Consolidated Health Care Plan (MCHCP) shall use the claims and administration procedures established by the HMO, POS or Indemnity health plan contract applicable to the insured member. Only after these procedures have been exhausted may the insured appeal to the MCHCP board of trustees to review the decision of the health plan contractor.

(D) Administrative decisions made solely by MCHCP may be appealed directly to the board of trustees, by either an insured member or health plan contractor.

1. All the provisions of this rule, where applicable, shall apply to these appeals.

2. The parties to such appeal shall be the appellant and the MCHCP shall be respondent.

3. The appellant, if aggrieved by the final decision of the board, shall have the right of appeal as stated in subsection (5)(C) herein.

**4. In reviewing these appeals, the board and/or staff may consider—**

**A. Newborns.**

(I) Notwithstanding any other rule, if a member currently has children coverage under the plan, s/he may enroll his/her newborn retroactively to the date of birth if the request is made within six (6) months of the child's date of birth. If a member does not currently have children coverage under the plan but states that the required information was provided within the thirty-one (31)-day enrollment period, s/he must sign an affidavit stating that their information was provided within the required time period. The affidavit must be notarized and received in the MCHCP office within thirty-one (31) days after the date of notification from the MCHCP.

(II) Once the MCHCP receives the signed affidavit from the member, coverage for the newborn will be backdated to the date of birth, if the request was made within six (6) months of the child's date of birth. The approval notification will include language that the MCHCP has no contractual authority to require the contractors to pay for claims that are denied due to the retroactive effective date. If an enrollment request is made under either of these two (2) scenarios past six (6) months following a child's date of birth, the information will be forwarded to the MCHCP board for a decision.

**B. Credible evidence.** Notwithstanding any other rule, the MCHCP may grant an appeal and not hold the member responsible when there is credible evidence that there has been an error or miscommunication, either through the member's payroll/personnel office or the MCHCP, that was no fault of the member.

**C. Change of plans due to dependent change of address.** A member may change plans outside the open enrollment period if his/her covered dependents move out of state and their current plan cannot provide coverage.

*expired Aug. 28, 1995. Original rule filed Dec. 21, 1994, effective June 30, 1995. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 6, 1999, effective Jan. 1, 2000, expires June 28, 2000. Amended: Filed Dec. 6, 1999.*

*PUBLIC COST:* This proposed amendment is estimated to cost state agencies or political subdivisions less than \$500 in the aggregate.

*PRIVATE COST:* This proposed amendment will not cost private entities more than \$500 in the aggregate.

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Ron Meyer, P.O. Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

*AUTHORITY:* section 103.059, RSMo 1994. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 13, 1995, effective May 1, 1995,

**T**his section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order or rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty days after the date of publication of the revision to the *Code of State Regulations*.

**T**he agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 4—Wildlife Code: General Provisions**

**ORDER OF RULEMAKING**

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

**3 CSR 10-4.115 Special Regulations for Department Areas is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2581–2582). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 2, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 4—Wildlife Code: General Provisions**

**ORDER OF RULEMAKING**

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

**3 CSR 10-4.116 Special Regulations for Areas Owned by Other Entities is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2582–2583). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 2, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 4—Wildlife Code: General Provisions**

**ORDER OF RULEMAKING**

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

**3 CSR 10-4.125 Inspection is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2583). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 1, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 5—Wildlife Code: Permits for Hunting,  
Fishing, Trapping**

**ORDER OF RULEMAKING**

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

**3 CSR 10-5.205 Permits Required; Exceptions is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2583–2585). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 1, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 5—Wildlife Code: Permits for Hunting,  
Fishing, Trapping**

**ORDER OF RULEMAKING**

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

**3 CSR 10-5.210 Permit to be Signed and Carried is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2586). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 1, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 5—Wildlife Code: Permits for Hunting,  
Fishing, Trapping**

**ORDER OF RULEMAKING**

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

**3 CSR 10-5.215 Permits and Privileges: How Obtained; Not Transferable is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2586). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 2, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 6—Wildlife Code: Sport Fishing: Seasons,  
Methods, Limits**

**ORDER OF RULEMAKING**

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

**3 CSR 10-6.405 General Provisions is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2586–2587). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 1, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 7—Wildlife Code: Hunting: Seasons, Methods,  
Limits**

**ORDER OF RULEMAKING**

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

**3 CSR 10-7.405 General Provisions is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2587). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 1, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 8—Wildlife Code: Trapping: Seasons, Methods**

**ORDER OF RULEMAKING**

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

**3 CSR 10-8.505 Trapping is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 1999 (24 MoReg 2587–2588). No changes have been made in the text of the proposed amendment, so it is not reprinted here. Therefore, the proposed amendment as published shall become effective **March 1, 2000**.

SUMMARY OF COMMENTS: No comments were received during the comment period.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 70—State Board of Chiropractic Examiners  
Chapter 2—General Rules**

**ORDER OF RULEMAKING**

By the authority vested in the State Board of Chiropractic Examiners under sections 43.543 and 331.100.2, RSMo 1994, the board amends a rule as follows:

**4 CSR 70-2.040 Application for Licensure is amended.**

A notice of the proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2201). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 70—State Board of Chiropractic Examiners  
Chapter 2—General Rules**

**ORDER OF RULEMAKING**

By the authority vested in the State Board of Chiropractic Examiners under section 331.030, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 70-2.050 Examination is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2201-2202). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT****Division 70—State Board of Chiropractic Examiners  
Chapter 2—General Rules****ORDER OF RULEMAKING**

By the authority vested in the State Board of Chiropractic Examiners under section 331.030, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 70-2.070 Reciprocity is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2202). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 230—State Board of Podiatric Medicine  
Chapter 2—General Rules****ORDER OF RULEMAKING**

By the authority vested in the State Board of Podiatric Medicine under sections 330.065, RSMo 1994 and 330.140, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 230-2.065 Temporary Licenses for Internship/Residency  
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2202-2203). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 1—General Rules****ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.010 and 337.050.9, RSMo, Supp. 1999, the board amends a rule as follows:

**4 CSR 235-1.015 Definitions is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2132). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 1—General Rules****ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.020 and 337.050.9, RSMo Supp. 1999, the board adopts rule as follows:

**4 CSR 235-1.025 Application for Provisional Licensure is  
adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2132). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 1—General Rules****ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.020 and 337.050.9, RSMo Supp. 1999, the board adopts rule as follows:

**4 CSR 235-1.026 Application for Temporary Licensure  
is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2133). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 1—General Rules****ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.020.1 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 235-1.030 Application for Licensure is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2134). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 1—General Rules**

**ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.029 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 235-1.031 Application for Health Service Provider  
Certification is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2134). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 1—General Rules**

**ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.030 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 235-1.060 Notification of Change of Address is  
amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2134–2135). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 1—General Rules**

**ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.030.3 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 235-1.063 Replacement of Annual Registration  
Certificates and Original Wall-Hanging Licenses is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2135). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 2—Licensure Requirements**

**ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.021 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 235-2.020 Supervised Professional Experience, Section  
337.021, RSMo is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2135). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 2—Licensure Requirements**

**ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.025 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 235-2.040 Supervised Professional Experience, Section  
337.025, RSMo, for the Delivery of Psychological Health  
Services is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2135–2137). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 2—Licensure Requirements**

**ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.025 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 235-2.050 Supervised Professional Experience, Section 337.025, RSMo, for the Delivery of Nonhealth Psychological Services is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2137-2138). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 2—Licensure Requirements**

**ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.020 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 235-2.060 Licensure by Examination is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2138-2139). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 2—Licensure Requirements**

**ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.020 and 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 235-2.065 Licensure by Endorsement of Written EPPP Examination Score is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2139). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 2—Licensure Requirements**

**ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.029 and 337.050, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 235-2.070 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2140). The section with changes is reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS AND EXPLANATION OF CHANGE:** The State Committee of Psychologists did not receive any comments regarding the proposed amendment, however, wishes to correct some grammatical errors. Therefore, the committee made some grammatical corrections in section (1).

**4 CSR 235-2.070 Licensure by Reciprocity**

(1) In order to be licensed as a psychologist in Missouri by reciprocity, an applicant shall—

(C) Provide satisfactory evidence on forms provided by the committee that the applicant is then currently licensed in another jurisdiction including any state, territory of the United States, or the District of Columbia; that the applicant has had no violations and no suspensions and no revocation of a license to practice psychology in any jurisdiction and meets one (1) of the following criteria:

1. Be a diplomate of the American Board of Professional Psychology;

2. Be a member of the National Register of Health Service Providers in Psychology;

3. Be currently licensed or certified as a psychologist in another jurisdiction which is then a signatory to the Association of State and Provincial Psychology Board's reciprocity agreement herein "ASPPB Agreement";

4. Be currently licensed or certified in another state, territory of the United States, or the District of Columbia, and—

A. Have a doctoral degree in psychology from a program accredited, or provisionally accredited by the American Psychological Association or that meets the requirements set forth in subdivision (3) of subsection 3 of section 337.025;

B. Have been licensed for the preceding five (5) years; and

C. Have had no disciplinary action taken against the licensee for the preceding five (5) years;

5. Is currently licensed or certified as a psychologist in another state, territory of the United States, or the District of Columbia whose requirements for licensure at the time the applicant was licensed were substantially equal to or greater than this state's requirements were for licensure at such time; or

6. Is currently licensed or certified as a psychologist in another state, territory of the United States, or the District of Columbia that extends like privileges for reciprocal licensing or certification to persons licensed by this state with similar qualifications;

(D) Have the burden of providing satisfactory evidence to the committee of his/her diplomate, member, licensure or certification status as specified in paragraph (1)(C)1., 2., 3., 4., 5., or 6.; and

(E) Have the burden of providing, as appropriate and necessary to his/her particular application, true and accurate certified copies of the licensure or certification requirements from the state(s), territory(ies) of the United States or the District of Columbia for which s/he is applying for reciprocal licensure as specified in paragraphs (1)(C) 1., 2., 3., 4., 5., or 6. All copies must be certified by the licensing or certification office(s).

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 3—Health Service Provider Certification**

**ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under sections 337.029 and 337.050, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 235-3.020 Health Service Provider Certification is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2140-2141). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The State Committee of Psychologists received one comment requesting that the board change the date in subsection (A) and (C) to December 31, 1996 and eliminate subsection (B). The committee determined that the date could not be changed because it is established in statute.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT  
Division 235—State Committee of Psychologists  
Chapter 4—Public Complaint Handling and Disposition Procedures**

**ORDER OF RULEMAKING**

By the authority vested in the State Committee of Psychologists under section 337.050.9, RSMo Supp. 1999, the board amends a rule as follows:

**4 CSR 235-4.030 Public Complaint Handling and Disposition Procedure is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2141-2142). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 20—Electric Utilities**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Public Service Commission under sections 386.250, RSMo Supp. 1999, and 393.140, RSMo 1994, the commission adopts a rule as follows:

4 CSR 240-20.015 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 1999 (24 MoReg 1340-1345). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** This order of rulemaking was approved by the Missouri Public Service Commission with one dissenting opinion that has been filed with the Commission's Secretary. Extensive written comments and reply comments were submitted and public hearings were held on September 13, 14 and 15, 1999. The Commission's staff supported the proposed rule with a few suggested changes based on the other comments received. The Office of Public Counsel and others in support of

the rule advocated for more stringent provisions. Comments from the regulated utilities supported less stringent provisions or opposed adoption of the rule.

**COMMENT:** Comments were received from several of the commenters adverse to the jurisdiction of the Commission to promulgate these rules. The Commission's Staff anticipated these arguments in their comments and presented arguments supporting the Commission's jurisdiction.

**RESPONSE:** The Commission's rulemaking authority is based on proper legal authority and the Commission has jurisdiction to adopt these rules.

**COMMENT:** Comments were received from several of the commenters suggesting that contested case procedures should be followed in the promulgation of these rules. Related comments addressed whether witnesses at the public hearings should be sworn.

**RESPONSE:** The Commission has followed proper rulemaking procedures to adopt these rules.

**COMMENT:** A purpose of the rule is to prevent regulated utilities from subsidizing their unregulated operations. This would occur where costs of unregulated operations are shifted to ratepayers for regulated operations or where subsidies are provided to unregulated operations through preferential service or treatment, including pricing. All commenters in support of the rule agreed with the Commission's intended purpose. Commenters in support urged more stringent limits on preferential service or treatment. Most commenters in opposition expressed the view that cost shifting should be limited rather than prevented and that some limits on preferential service or treatment should be imposed but suggested that the proposed rule went too far on both types of subsidies.

**RESPONSE:** Generally, the rule as proposed, presents a moderate approach by the Commission. Other states that have adopted rules have taken approaches that were more stringent or approaches that were less stringent. The rulemaking record supports full, effective limitations on cost shifting. With respect to preferential service or treatment, the rulemaking record supports clarifying changes and making changes to allow more flexibility to regulated utilities. In most matters more stringent standards of conduct were not supported at this time.

**COMMENT:** Several commenters objected to the use of fully distributed costs (FDC) and "asymmetrical pricing" under section (2). Under the proposed rule, cost shifting and other subsidies are prohibited by application of the pricing standard under section (2). The standard uses both FDC and fair market price (FMP). FDC is a costing methodology that accounts for all costs by assigning all costs used to produce a good or service through a direct or allocated approach or a combination of direct and allocated costs. Under the standard, when a regulated utility acquires goods or services from an affiliate entity it may not pay more than the FDC for the utility to produce the good or service for itself or FMP, whichever is less. When a regulated utility transfers goods or services to an affiliate entity it must obtain the greater of FMP or FDC to the regulated utility. The term asymmetrical pricing refers to the fact that the pricing standard is reversed depending upon whether the regulated utility is buying or is selling.

**RESPONSE:** FDC assures that all costs are accounted and recovered and FMP, in conjunction with FDC, assures that the regulated utilities obtain the best prices or lowest costs possible whether buying or selling or producing goods or services. Asymmetrical pricing assures that the pricing standard is always applied to the favor of regulated utility's customers. The commenters that objected to FDC and asymmetrical pricing proposed costing methodologies that would not fully account for direct costs, indirect costs and opportunity costs or that would permit

transactions to occur at a pricing standard that was not optimized to ratepayers. The alternative proposals would allow cost shifting to occur so long as a direct cost increase did not result for ratepayers. Prices for regulated goods and services would be higher over time than if the affiliate transactions occurred using FMP, FDC and asymmetrical pricing. These opponents to the proposed standard believed that transactions reflecting economies of scope and scale would be discouraged, even to the point that the affiliate transactions would not occur at all, and that incremental or marginal benefits under a less stringent standard would be lost to ratepayers. The Commission does not find this assertion to be credible. Foregoing opportunity costs or shifting the costs of unregulated activities to ratepayers will not generally be in the interests of ratepayers, or for that matter, the longer term interests of the regulated companies. If the cost shifting occurs to enhance profits for already profitable unregulated activities then ratepayers are being victimized to obtain predatory profits. The result would be a regulatory and ratepayer backlash. If the cost shifting occurs because the costs of the regulated company and its affiliates are higher than the costs of competitors then ratepayers are again being victimized, and, in addition the Commission would be allowing the misallocation of economic resources to keep an inefficient competitor in business. The solution here is to cut costs, a move that would benefit ratepayers, shareholders and consumers. If the cost shifting occurs merely to increase the rate of return in an otherwise low margin venture that shareholders would disapprove, ratepayers are again being victimized. The solution is to select ventures that offer an acceptable rate of return and to avoid those that do not. Economies of scope and scale do not result from shifting costs or foregoing profitable pricing opportunities; they result from the efficient and maximized application of resources. A company or group of companies in exclusively competitive markets may experience circumstances where shifting costs or foregoing profitable pricing opportunities serves a business purpose but those circumstances will be tempered by competition, particularly over the long run. A company or group of companies in mixed competitive and regulated markets has incentives to shift costs or forego profitable pricing opportunities that are not tempered by competition, but by regulators. The interests of ratepayers are not served by paying the costs of producing and selling goods and services that they are not buying. Section (10) of the rule permits variances. To the extent that circumstances occur where the best interests of ratepayers would be served by permitting cost shifting to occur for a period of time a waiver could be obtained.

**COMMENT:** Several commenters in support of the proposed rule advocated additional and more stringent standards to be added in a new section (2) regarding access to customer information, marketing activities including use of names and logos, some degree of physical separation from affiliates, and restrictions on the transfer of employees.

**RESPONSE:** Generally, additional and more stringent standards are not required. The record shows that the most likely competitors to affiliates of incumbent utilities are large, national or international corporations that have similar or equivalent competitive strengths. It is not the intent or purpose of the proposed rules to handicap any competitor. Doing so would be detrimental to both ratepayers and consumers, resulting in higher costs or less information for ratepayers and consumers. In most cases, the interests of ratepayers will be best served by simply assuring that costs are not shifted to them. In a few instances preferential service or treatment derived from regulated activity or resources should be limited where an unfair advantage is provided to an affiliate entity over its competitors.

**COMMENT:** Several commenters asserted that the record keeping and documentation requirements for regulated utilities and their affiliates would be unduly burdensome and costly, ultimately to the detriment of ratepayers.

**RESPONSE:** The anticipated fiscal costs for the proposed rule appear modest and not unduly burdensome. Industry input was requested and considered to develop the estimated fiscal impact. The rulemaking record shows that without the record keeping and documentation requirements it would be either impossible to obtain the information necessary to implement the rule or even more costly to implement the rule through more elaborate and time consuming regulatory audits. Many implementation costs, such as development of cost allocation manuals (CAM), would not be reoccurring. Some utilities already have costing and documentation methodologies in place that would satisfy many of the requirements of the proposed rule. There will be additional accounting and documentation requirements as a result of this rule. However, existing systems that already provide useful information would not be duplicated. Verifying FDC and FMP could produce benefits unrelated to regulatory requirements by providing data to support more efficient market based decision making and allocation of resources by the regulated utilities. Finally, the rule allows a great deal of flexibility to customize CAMs and to obtain variances where circumstances merit. The degree and detail of record keeping and documentation can be varied so that the cost of the regulation does not outweigh the benefits afforded.

**COMMENT:** Some commenters, both in support and in opposition, suggested a change to the rule to establish a defined dollar threshold for an exemption from certain compliance requirements.

**RESPONSE:** This type of exception can be addressed through individual variances under the rule. Companies will vary greatly in size, activities and the methods of implementing compliance systems.

**COMMENT:** Comments were received suggesting that a definition be provided for the term "corporate support" in order to allow greater flexibility to obtain economies in certain areas.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission accepts this suggestion and has added a definition for this term in section (1). Subsection (2)(B) has been modified to provide greater flexibility in that standard.

**COMMENT:** Comments were received suggesting that a definition be provided for the term "information" since certain standards limit the provision of "preferential" "information" to affiliates and the meaning or scope is not clear.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission accepts this suggestion and has added a definition for this term in section (1).

**COMMENT:** Comments were received suggesting that a definition be provided for the term "unfair advantage" since certain definitions and standards use this term and the meaning or scope is not clear.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission accepts this suggestion and has added a definition for this term in section (1).

**COMMENT:** Comments were received suggesting the definition of "affiliate entity" posed Hancock Amendment issues and that the definition was not clear as to its application to departments within utilities.

**RESPONSE:** The Commission does not agree with these comments and did not change this definition.

**COMMENT:** Comments were received regarding the definition of "control" and particularly regarding the presumption of control based on the beneficial ownership of ten percent or more of voting securities or partnership interest. Comments either supported this presumption or criticized it and offered a presumption only at the fifty percent level.

**RESPONSE:** The Commission has not changed this definition. The record supports the reasonableness of the presumption as a general measure of an effective controlling interest. This presumption will aid in reducing regulatory burdens and costs. The presumption is not absolute and it is expressly rebuttable. A fifty percent presumption would not serve any efficient regulatory purpose since, in almost every case, it would represent both effective and absolute control.

**COMMENT:** Comments were received regarding the appropriateness of limiting employee transfers between regulated utilities and affiliates and the application of the pricing standards to these transfers under section (2). Several commenters noted the difficulty of pricing an employee or trained employee services. One commenter suggested simply establishing a fixed fee.

**RESPONSE AND EXPLANATION OF CHANGE:** Commenters offering explanations of how an employee or trained employee would be valued were not consistent or clear. Commenters acknowledged that valued employees could go to work for a non-affiliated competitor and there would be no payment to the regulated utility at all. Under these circumstances any payment appears to be more of a penalty or a handicap to an incumbent utility and its affiliate entities than a means to prevent cost shifting or unfair preferential treatment. The standards are properly directed at preventing cost shifting and subsidies. This purpose can be accomplished by focusing on the pricing of information and providing fair access to information. Employee transfers do not have to be restricted, penalized or compensated to accomplish this purpose. The Commission has deleted the descriptive list that included the term "trained employees" from paragraph (2)(A)2.

**COMMENT:** Comments were received from several commenters regarding section (2) concerning the provision of information to consumers and referrals for services provided by a regulated utility regarding an affiliate entity or its competitors. Some commenters proposed that the regulated utility provide information and referrals for competitors or references to marketing or referral services. Some commenters opposed any additional requirements and still others opposed any forced marketing on the behalf of competitors.

**RESPONSE AND EXPLANATION OF CHANGE:** The rule is not intended to handicap incumbent utilities or their affiliated entities. Maintaining a referral list would be an undue and costly burden. Even referral to commercial marketing resources or listings is unfair in that competitors will not be under any reciprocal requirement. As noted previously, competitors are most likely to be large national and international companies with their own marketing capabilities. The abuse or potential abuse to guard against is the possible perception that regulated services and unregulated goods or services are tied or are both regulated services. The Commission has made clarifying changes to this provision and added a subsection to assure that consumers are aware that affiliate entity services are not regulated services.

**COMMENT:** Several commenters suggested an additional standard to prohibit tying. One commenter noted that existing state and federal antitrust laws already address this matter.

**RESPONSE:** A standard expressly prohibiting tying is not required. An addition to the rule discussed below assures that state and federal antitrust laws remain applicable.

**COMMENT:** Several commenters suggested a specific standard related to providing information about customers.

**RESPONSE AND EXPLANATION OF CHANGE:** The rule as proposed addresses pricing and preferential access for information. However, the suggested standard would incorporate reasonable consumer and ratepayer protections and is desirable. This additional standard has been incorporated into the rule in an additional subsection in section (2).

**COMMENT:** Comments were received that suggested that approval of a CAM addressing certain matters should suffice for later ratemaking purposes concerning the same matters. The commenters also suggested that information presented in a CAM should be limited to Missouri operations and that non-regulated activities constituting less than ten percent of revenues should be treated as regulated activity and exempted from the rule requirements.

**RESPONSE:** The Commission does not anticipate that there will be significant cases where ratemaking treatment will be inconsistent with a CAM. However, a CAM addresses or anticipates many issues in a prospective fashion. Additional information may often come to light and be considered in a ratemaking proceeding. In a ratemaking proceeding the CAM does not bind the regulated utility or the Commission. This flexibility does not harm any interest. The rule allows for variances should it be desirable to grant them.

**COMMENT:** Two commenters recommended that the regulated utility maintain its books, accounts and records separate from those of its affiliates.

**RESPONSE AND EXPLANATION OF CHANGE:** This change would assist implementation of the rule and has been added to section (4).

**COMMENT:** A commenter suggested that section (4) include a record keeping requirement to list employee movement between the regulated utility and affiliated entities.

**RESPONSE:** This is a burdensome requirement that is not necessary based on the information presented in this rulemaking proceeding.

**COMMENT:** Some commenters suggested exempting small regulated utilities from the rule.

**RESPONSE:** This is a matter that could be taken up under a variance request.

**COMMENT:** Some commenters expressed uncertainty as to the permissible scope of variances under the rule.

**RESPONSE AND EXPLANATION OF CHANGE:** This section has been renumbered from (9) to (10). The scope and terms of variances, whether partial or complete, under section (10) will be determined by the facts and circumstances found in support of the application. Section (10) has been clarified.

**COMMENT:** Some commenters suggested that regulated utilities should train and advise their employees concerning the requirements of this rule.

**RESPONSE AND EXPLANATION OF CHANGE:** This change would assist in successfully implementing the rule. An additional section has been added to the rule for this change.

**COMMENT:** Some commenters referred to antitrust provisions and compared antitrust concepts to the proposed rules in their statements. The proposed rules address similar competitive and monopoly power issues.

**RESPONSE AND EXPLANATION OF CHANGE:** Under the Missouri Antitrust Law activities or arrangements expressly approved or regulated by a regulatory body of the state may be exempted from the antitrust law. It is not the Commission's intent to create any exemptions. An additional section has been added to the rule to clarify the Commission's intent.

#### **4 CSR 240-20.015 Affiliate Transactions**

##### **(1) Definitions.**

(A) Affiliated entity means any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county or a

combination of political subdivisions which, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated electrical corporation.

(B) Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated electrical corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated electrical corporation and the regulated business operations of an electrical corporation. An affiliate transaction for the purposes of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754 by the General Assembly of Missouri.

(C) Control (including the terms "controlling," "controlled by," and "common control") means the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one (1) or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule. This provision, however, shall not be construed to prohibit a regulated electrical corporation from rebutting the presumption that its ownership interest in an entity confers control.

(D) Corporate support means joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.

(E) Derivatives means a financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., "derived from") the value of one (1) or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments or any agreed-upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates). Derivatives involve the trading of rights or obligations based on the underlying product, but do not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for a fixed rate of return.

(F) Fully distributed cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated (e.g., general and administrative) must also be included in the FDC calculation through a general allocation.

(G) Information means any data obtained by a regulated electrical corporation that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(H) Preferential service means information or treatment or actions by the regulated electrical corporation which places the affiliated entity at an unfair advantage over its competitors.

(I) Regulated electrical corporation means every electrical corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapter 393, RSMo.

(J) Unfair advantage means an advantage that cannot be obtained by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(K) Variance means an exemption granted by the commission from any applicable standard required pursuant to this rule.

## (2) Standards.

(A) A regulated electrical corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated electrical corporation shall be deemed to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for goods or services above the lesser of—

A. The fair market price; or

B. The fully distributed cost to the regulated electrical corporation to provide the goods or services for itself; or

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—

A. The fair market price; or

B. The fully distributed cost to the regulated electrical corporation.

(B) Except as necessary to provide corporate support functions, the regulated electrical corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

(C) Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. General or aggregated customer information shall be made available to affiliated or unaffiliated entities upon similar terms and conditions. The regulated electrical corporation may set reasonable charges for costs incurred in producing customer information. Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities.

(D) The regulated electrical corporation shall not participate in any affiliate transactions which are not in compliance with this rule except as otherwise provided in section (10) of this rule.

(E) If a customer requests information from the regulated electrical corporation about goods or services provided by an affiliated entity, the regulated electrical corporation may provide information about its affiliate but must inform the customer that regulated services are not tied to the use of an affiliate provider and that other service providers may be available. The regulated electrical corporation may provide reference to other service providers or to commercial listings, but is not required to do so. The regulated electrical corporation shall include in its annual Cost Allocation Manual (CAM), the criteria, guidelines, and procedures it will follow to be in compliance with this rule.

(F) Marketing materials, information or advertisements by an affiliate entity that share an exact or similar name, logo or trademark of the regulated utility shall clearly display or announce that the affiliate entity is not regulated by the Missouri Public Service Commission.

## (4) Record Keeping Requirements.

(A) A regulated electrical corporation shall maintain books, accounts and records separate from those of its affiliates.

(B) Each regulated electrical corporation shall maintain the following information in a mutually agreed-to electronic format (i.e., agreement between the staff, Office of the Public Counsel and the regulated electrical corporation) regarding affiliate transactions on a calendar year basis and shall provide such information to the commission staff and the Office of the Public Counsel on, or before, March 15 of the succeeding year:

1. A full and complete list of all affiliated entities as defined by this rule;

2. A full and complete list of all goods and services provided to or received from affiliated entities;

3. A full and complete list of all contracts entered with affiliated entities;

4. A full and complete list of all affiliate transactions undertaken with affiliated entities without a written contract together with a brief explanation of why there was no contract;

5. The amount of all affiliate transactions by affiliated entity and account charged; and

6. The basis used (e.g., fair market price, FDC, etc.) to record each type of affiliate transaction.

(C) In addition, each regulated electrical corporation shall maintain the following information regarding affiliate transactions on a calendar year basis:

1. Records identifying the basis used (e.g., fair market price, FDC, etc.) to record all affiliate transactions; and

2. Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.

(9) The regulated electrical corporation shall train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance.

(10) Variances.

(A) A variance from the standards in this rule may be obtained by compliance with paragraphs (10)(A)1. or (10)(A)2. The granting of a variance to one regulated electrical corporation does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated electrical corporation to comply with the standards. The scope of a variance will be determined based on the facts and circumstances found in support of the application.

1. The regulated electrical corporation shall request a variance upon written application in accordance with commission procedures set out in 4 CSR 240-2.060(11); or

2. A regulated electrical corporation may engage in an affiliate transaction not in compliance with the standards set out in subsection (2)(A) of this rule, when to its best knowledge and belief, compliance with the standards would not be in the best interests of its regulated customers and it complies with the procedures required by subparagraphs (10)(A)2.A. and (10)(A)2.B. of this rule—

A. All reports and record retention requirements for each affiliate transaction must be complied with; and

B. Notice of the noncomplying affiliate transaction shall be filed with the secretary of the commission and the Office of the Public Counsel within ten (10) days of the occurrence of the noncomplying affiliate transaction. The notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of subsection (2)(A), and shall provide a detailed explanation of how the affiliate transaction was in the best interests of the regulated customers. Within thirty (30) days of the notice of the noncomplying affiliate transaction, any party shall have the right to request a hearing regarding the noncomplying affiliate transaction. The commission may grant or deny the request for hearing at that time. If the commission denies a request for hearing, the denial shall not in any way prejudice a party's ability to challenge the affiliate transaction at the time of the annual CAM filing. At the time of the filing of the regulated electrical corporation's annual CAM filing the regulated electrical corporation shall provide to the secretary of the commission a listing of all noncomplying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliate transaction submitted pursuant to this section shall remain interim, subject to disallowance, pending final commission determination on whether the noncomplying affiliate transaction resulted in the best interests of the regulated customers.

(11) Nothing contained in this rule and no action by the commission under this rule shall be construed to approve or exempt any activity or arrangement that would violate the antitrust laws of the state of Missouri or of the United States or to limit the rights of any person or entity under those laws.

## Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

### Division 240—Public Service Commission Chapter 40—Gas Utilities and Gas Safety Standards

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under sections 386.250, RSMo Supp. 1999, and 393.140, RSMo 1994, the commission adopts a rule as follows:

4 CSR 240-40.015 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 1999 (24 MoReg 1346-1351). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** This order of rulemaking was approved by the Missouri Public Service Commission with one dissenting opinion that has been filed with the Commission's Secretary. Extensive written comments and reply comments were submitted and public hearings were held on September 13, 14 and 15, 1999. The Commission's Staff supported the proposed rule with a few suggested changes based on the other comments received. The Office of Public Counsel and others in support of the rule advocated for more stringent provisions. Comments from the regulated utilities supported less stringent provisions or opposed adoption of the rule.

**COMMENT:** Comments were received from several of the commenters adverse to the jurisdiction of the Commission to promulgate these rules. The Commission's Staff anticipated these arguments in their comments and presented arguments supporting the Commission's jurisdiction.

**RESPONSE:** The Commission's rulemaking authority is based on proper legal authority and the Commission has jurisdiction to adopt these rules.

**COMMENT:** Comments were received from several of the commenters suggesting that contested case procedures should be followed in the promulgation of these rules. Related comments addressed whether witnesses at the public hearings should be sworn.

**RESPONSE:** The Commission has followed proper rulemaking procedures to adopt these rules.

**COMMENT:** A purpose of the rule is to prevent regulated utilities from subsidizing their unregulated operations. This would occur where costs of unregulated operations are shifted to ratepayers for regulated operations or where subsidies are provided to unregulated operations through preferential service or treatment, including pricing. All commenters in support of the rule agreed with the Commission's intended purpose. Commenters in support urged more stringent limits on preferential service or treatment. Most commenters in opposition expressed the view that cost shifting should be limited rather than prevented and that some limits on preferential service or treatment should be imposed but suggested that the proposed rule went too far on both types of subsidies.

**RESPONSE:** Generally, the rule as proposed, presents a moderate approach by the Commission. Other states that have adopted rules have taken approaches that were more stringent or approaches that were less stringent. The rulemaking record supports full, effective limitations on cost shifting. With respect to preferential service or treatment, the rulemaking record supports clarifying changes and making changes to allow more flexibility to regulated utilities. In most matters more stringent standards of conduct were not supported at this time.

COMMENT: Several commenters objected to the use of fully distributed costs (FDC) and “asymmetrical pricing” under section (2). Under the proposed rule, cost shifting and other subsidies are prohibited by application of the pricing standard under section (2). The standard uses both FDC and fair market price (FMP). FDC is a costing methodology that accounts for all costs by assigning all costs used to produce a good or service through a direct or allocated approach or a combination of direct and allocated costs. Under the standard, when a regulated utility acquires goods or services from an affiliate entity it may not pay more than the FDC for the utility to produce the good or service for itself or FMP, whichever is less. When a regulated utility transfers goods or services to an affiliate entity it must obtain the greater of FMP or FDC to the regulated utility. The term asymmetrical pricing refers to the fact that the pricing standard is reversed depending upon whether the regulated utility is buying or is selling.

RESPONSE: FDC assures that all costs are accounted and recovered and FMP, in conjunction with FDC, assures that the regulated utilities obtain the best prices or lowest costs possible whether buying or selling or producing goods or services. Asymmetrical pricing assures that the pricing standard is always applied to the favor of regulated utility’s customers. The commenters that objected to FDC and asymmetrical pricing proposed costing methodologies that would not fully account for direct costs, indirect costs and opportunity costs or that would permit transactions to occur at a pricing standard that was not optimized to ratepayers. The alternative proposals would allow cost shifting to occur so long as a direct cost increase did not result for ratepayers. Prices for regulated goods and services would be higher over time than if the affiliate transactions occurred using FMP, FDC and asymmetrical pricing. These opponents to the proposed standard believed that transactions reflecting economies of scope and scale would be discouraged, even to the point that the affiliate transactions would not occur at all, and that incremental or marginal benefits under a less stringent standard would be lost to ratepayers. The Commission does not find this assertion to be credible. Foregoing opportunity costs or shifting the costs of unregulated activities to ratepayers will not generally be in the interests of ratepayers, or for that matter, the longer term interests of the regulated companies. If the cost shifting occurs to enhance profits for already profitable unregulated activities then ratepayers are being victimized to obtain predatory profits. The result would be a regulatory and ratepayer backlash. If the cost shifting occurs because the costs of the regulated company and its affiliates are higher than the costs of competitors then ratepayers are again being victimized, and, in addition the Commission would be allowing the misallocation of economic resources to keep an inefficient competitor in business. The solution here is to cut costs, a move that would benefit ratepayers, shareholders and consumers. If the cost shifting occurs merely to increase the rate of return in an otherwise low margin venture that shareholders would disapprove, ratepayers are again being victimized. The solution is to select ventures that offer an acceptable rate of return and to avoid those that do not. Economies of scope and scale do not result from shifting costs or foregoing profitable pricing opportunities; they result from the efficient and maximized application of resources. A company or group of companies in exclusively competitive markets may experience circumstances where shifting costs or foregoing profitable pricing opportunities serves a business purpose but those circumstances will be tempered by competition, particularly over the long run. A company or group of companies in mixed competitive and regulated markets has incentives to shift costs or forego profitable pricing opportunities that are not tempered by competition, but by regulators. The interests of ratepayers are not served by paying the costs of producing and selling goods and services that they are not buying. Section (10) of the rule permits variances. To the extent that circumstances occur where the best interests of ratepayers would be served by permitting cost shifting to occur for a period of time a waiver could be obtained.

COMMENT: Several commenters in support of the proposed rule advocated additional and more stringent standards to be added in a new section (2) regarding access to customer information, marketing activities including use of names and logos, some degree of physical separation from affiliates, and restrictions on the transfer of employees.

RESPONSE: Generally, additional and more stringent standards are not required. The record shows that the most likely competitors to affiliates of incumbent utilities are large, national or international corporations that have similar or equivalent competitive strengths. It is not the intent or purpose of the proposed rules to handicap any competitor. Doing so would be detrimental to both ratepayers and consumers, resulting in higher costs or less information for ratepayers and consumers. In most cases, the interests of ratepayers will be best served by simply assuring that costs are not shifted to them. In a few instances preferential service or treatment derived from regulated activity or resources should be limited where an unfair advantage is provided to an affiliate entity over its competitors.

COMMENT: Several commenters asserted that the record keeping and documentation requirements for regulated utilities and their affiliates would be unduly burdensome and costly, ultimately to the detriment of ratepayers.

RESPONSE: The anticipated fiscal costs for the proposed rule appear modest and not unduly burdensome. Industry input was requested and considered to develop the estimated fiscal impact. The rulemaking record shows that without the record keeping and documentation requirements it would be either impossible to obtain the information necessary to implement the rule or even more costly to implement the rule through more elaborate and time consuming regulatory audits. Many implementation costs, such as development of cost allocation manuals (CAM), would not be reoccurring. Some utilities already have costing and documentation methodologies in place that would satisfy many of the requirements of the proposed rule. There will be additional accounting and documentation requirements as a result of this rule. However, existing systems that already provide useful information would not be duplicated. Verifying FDC and FMP could produce benefits unrelated to regulatory requirements by providing data to support more efficient market based decision making and allocation of resources by the regulated utilities. Finally, the rule allows a great deal of flexibility to customize CAMs and to obtain variances where circumstances merit. The degree and detail of record keeping and documentation can be varied so that the cost of the regulation does not outweigh the benefits afforded.

COMMENT: Some commenters, both in support and in opposition, suggested a change to the rule to establish a defined dollar threshold for an exemption from certain compliance requirements.

RESPONSE: This type of exception can be addressed through individual variances under the rule. Companies will vary greatly in size, activities and the methods of implementing compliance systems.

COMMENT: Comments were received suggesting that a definition be provided for the term “corporate support” in order to allow greater flexibility to obtain economies in certain areas.

RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1). Subsection (2)(B) has been modified to provide greater flexibility in that standard.

COMMENT: Comments were received suggesting that a definition be provided for the term “information” since certain standards limit the provision of “preferential” “information” to affiliates and the meaning or scope is not clear.

RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1).

COMMENT: Comments were received suggesting that a definition be provided for the term "unfair advantage" since certain definitions and standards use this term and the meaning or scope is not clear.

RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1).

COMMENT: Comments were received suggesting the definition of "affiliate entity" posed Hancock Amendment issues and that the definition was not clear as to its application to departments within utilities.

RESPONSE: The Commission does not agree with these comments and did not change this definition.

COMMENT: Comments were received regarding the definition of "control" and particularly regarding the presumption of control based on the beneficial ownership of ten percent or more of voting securities or partnership interest. Comments either supported this presumption or criticized it and offered a presumption only at the fifty percent level.

RESPONSE: The Commission has not changed this definition. The record supports the reasonableness of the presumption as a general measure of an effective controlling interest. This presumption will aid in reducing regulatory burdens and costs. The presumption is not absolute and it is expressly rebuttable. A fifty percent presumption would not serve any efficient regulatory purpose since, in almost every case, it would represent both effective and absolute control.

COMMENT: Comments were received regarding the appropriateness of limiting employee transfers between regulated utilities and affiliates and the application of the pricing standards to these transfers under section (2). Several commenters noted the difficulty of pricing an employee or trained employee services. One commenter suggested simply establishing a fixed fee.

RESPONSE AND EXPLANATION OF CHANGE: Commenters offering explanations of how an employee or trained employee would be valued were not consistent or clear. Commenters acknowledged that valued employees could go to work for a non-affiliated competitor and there would be no payment to the regulated utility at all. Under these circumstances any payment appears to be more of a penalty or a handicap to an incumbent utility and its affiliate entities than a means to prevent cost shifting or unfair preferential treatment. The standards are properly directed at preventing cost shifting and subsidies. This purpose can be accomplished by focusing on the pricing of information and providing fair access to information. Employee transfers do not have to be restricted, penalized or compensated to accomplish this purpose. The Commission has deleted the descriptive list that included the term "trained employees" from paragraph (2)(A)2.

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RESPONSE AND EXPLANATION OF CHANGE: The rule is not intended to handicap incumbent utilities or their affiliated entities. Maintaining a referral list would be an undue and costly burden. Even referral to commercial marketing resources or listings is unfair in that competitors will not be under any reciprocal requirement. As noted previously, competitors are most likely to be large national and international companies with their own marketing

capabilities. The abuse or potential abuse to guard against is the possible perception that regulated services and unregulated goods or services are tied or are both regulated services. The Commission has made clarifying changes to this provision and added a subsection to assure that consumers are aware that affiliate entity services are not regulated services.

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RESPONSE: A standard expressly prohibiting tying is not required. An addition to the rule discussed below assures that state and federal antitrust laws remain applicable.

COMMENT: Several commenters suggested a specific standard related to providing information about customers.

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RESPONSE: The Commission does not anticipate that there will be significant cases where ratemaking treatment will be inconsistent with a CAM. However, a CAM addresses or anticipates many issues in a prospective fashion. Additional information may often come to light and be considered in a ratemaking proceeding. In a ratemaking proceeding the CAM does not bind the regulated utility or the Commission. This flexibility does not harm any interest. The rule allows for variances should it be desirable to grant them.

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COMMENT: Some commenters suggested exempting small regulated utilities from the rule.

RESPONSE: This is a matter that could be taken up under a variance request.

COMMENT: Some commenters expressed uncertainty as to the permissible scope of variances under the rule.

RESPONSE AND EXPLANATION OF CHANGE: This section has been renumbered from (9) to (10). The scope and terms of variances, whether partial or complete, under section (10) will be determined by the facts and circumstances found in support of the application. Section (10) has been clarified.

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**RESPONSE AND EXPLANATION OF CHANGE:** This change would assist in successfully implementing the rule. An additional section has been added to the rule for this change.

**COMMENT:** Some commenters referred to antitrust provisions and compared antitrust concepts to the proposed rules in their statements. The proposed rules address similar competitive and monopoly power issues.

**RESPONSE AND EXPLANATION OF CHANGE:** Under the Missouri Antitrust Law activities or arrangements expressly approved or regulated by a regulatory body of the state may be exempted from the antitrust law. It is not the Commission's intent to create any exemptions. An additional section has been added to the rule to clarify the Commission's intent.

#### **4 CSR 240-40.015 Affiliate Transactions**

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(B) Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated gas corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated gas corporation and the regulated business operations of a gas corporation. An affiliate transaction for the purposes of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754, RSMo by the General Assembly of Missouri.

(C) Control (including the terms "controlling," "controlled by," and "common control") means the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule. This provision, however, shall not be construed to prohibit a regulated gas corporation from rebutting the presumption that its ownership interest in an entity confers control.

(D) Corporate support means joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.

(E) Derivatives means a financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., "derived from") the value of one or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments, or any agreed-upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates). Derivatives involve the trading of rights or obligations based on the underlying product, but do not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for fixed rate of return.

(F) Fully distributed cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and

services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated (e.g., general and administrative) must also be included in the FDC calculation through a general allocation.

(G) Information means any data obtained by a regulated gas corporation that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(H) Preferential service means information or treatment or actions by the regulated gas corporation which places the affiliated entity at an unfair advantage over its competitors.

(I) Regulated gas corporation means every gas corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapter 393, RSMo.

(J) Unfair advantage means an advantage that cannot be obtained by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(K) Variance means an exemption granted by the commission from any applicable standard required pursuant to this rule.

##### **(2) Standards.**

(A) A regulated gas corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated gas corporation shall be deemed to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for goods or services above the lesser of—

A. The fair market price; or

B. The fully distributed cost to the regulated gas corporation to provide the goods or services for itself; or

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—

A. The fair market price; or

B. The fully distributed cost to the regulated gas corporation.

(B) Except as necessary to provide corporate support functions, the regulated gas corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

(C) Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. General or aggregated customer information shall be made available to affiliated or unaffiliated entities upon similar terms and conditions. The regulated gas corporation may set reasonable charges for costs incurred in producing customer information. Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities.

(D) The regulated gas corporation shall not participate in any affiliated transactions which are not in compliance with this rule, except as otherwise provided in section (10) of this rule.

(E) If a customer requests information from the regulated gas corporation about goods or services provided by an affiliated entity, the regulated gas corporation may provide information about its affiliate but must inform the customer that regulated services are not tied to the use of an affiliate provider and that other service providers may be available. The regulated gas corporation may provide reference to other service providers or to commercial listings, but is not required to do so. The regulated gas corporation shall include in its annual Cost Allocation Manual (CAM), the criteria, guidelines and procedures it will follow to be in compliance with the rule.

(F) Marketing materials, information or advertisements by an affiliate entity that share an exact or similar name, logo or trademark of the regulated utility shall clearly display or announce that the affiliate entity is not regulated by the Missouri Public Service Commission.

(4) Record Keeping Requirements.

(A) A regulated gas corporation shall maintain books, accounts and records separate from those of its affiliates.

(B) Each regulated gas corporation shall maintain the following information in a mutually agreed-to electronic format (i.e., agreement between the staff, Office of the Public Counsel and the regulated gas corporation) regarding affiliate transactions on a calendar year basis and shall provide such information to the commission staff and the Office of the Public Counsel on, or before, March 15 of the succeeding year:

1. A full and complete list of all affiliated entities as defined by this rule;

2. A full and complete list of all goods and services provided to or received from affiliated entities;

3. A full and complete list of all contracts entered with affiliated entities;

4. A full and complete list of all affiliate transactions undertaken with affiliated entities without a written contract together with a brief explanation of why there was no contract;

5. The amount of all affiliate transactions, by affiliated entity and account charged; and

6. The basis used (e.g., fair market price, FDC, etc.) to record each type of affiliate transaction.

(C) In addition each regulated gas corporation shall maintain the following information regarding affiliate transactions on a calendar year basis:

1. Records identifying the basis used (e.g., fair market price, FDC, etc.) to record all affiliate transactions; and

2. Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.

(9) The regulated gas corporation shall train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance.

(10) Variances.

(A) A variance from the standards in this rule may be obtained by compliance with paragraphs (10)(A)1. or (10)(A)2. The granting of a variance to one regulated gas corporation does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated gas corporation to comply with the standards. The scope of a variance will be determined based on the facts and circumstances found in support of the application—

1. The regulated gas corporation shall request a variance upon written application in accordance with commission procedures set out in 4 CSR 240-2.060(11); or

2. A regulated gas corporation may engage in an affiliate transaction not in compliance with the standards set out in subsection (2)(A) of this rule, when to its best knowledge and belief, compliance with the standards would not be in the best interests of its regulated customers and it complies with the procedures required by subparagraphs (10)(A)2.A. and (10)(A)2.B. of this rule—

A. All reports and record retention requirements for each affiliate transaction must be complied with; and

B. Notice of the noncomplying affiliate transaction shall be filed with the secretary of the commission and the Office of the Public Counsel within ten (10) days of the occurrence of the noncomplying affiliate transaction. The notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of subsection (2)(A), and shall provide a detailed explanation of how the affiliate transaction was in the best

interests of the regulated customers. Within thirty (30) days of the notice of the noncomplying affiliate transaction, any party shall have the right to request a hearing regarding the noncomplying affiliate transaction. The commission may grant or deny the request for hearing at that time. If the commission denies a request for hearing, the denial shall not in any way prejudice a party's ability to challenge the affiliate transaction at the time of the annual CAM filing. At the time of the filing of the regulated gas corporation's annual CAM filing the regulated gas corporation shall provide to the secretary of the commission a listing of all noncomplying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliate transaction submitted pursuant to this section shall remain interim, subject to disallowance, pending final commission determination on whether the noncomplying affiliate transaction resulted in the best interests of the regulated customers.

(11) Nothing contained in this rule and no action by the commission under this rule shall be construed to approve or exempt any activity or arrangement that would violate the antitrust laws of the state of Missouri or of the United States or to limit the rights of any person or entity under those laws.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 40—Gas Utilities and Gas Safety Standards**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Public Service Commission under sections 386.250, RSMo Supp. 1999 and 393.140, RSMo 1994, the commission adopts a rule as follows:

4 CSR 240-40.016 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 1999 (24 MoReg 1352-1358). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** This order of rulemaking was approved by the Missouri Public Service Commission with one dissenting opinion that has been filed with the Commission's Secretary. Extensive written comments and reply comments were submitted and public hearings were held on September 13, 14 and 15, 1999. The Commission's staff supported the proposed rule with a few suggested changes based on the other comments received. The Office of Public Counsel and others in support of the rule advocated for more stringent provisions. Comments from the regulated utilities supported less stringent provisions or opposed adoption of the rule.

**COMMENT:** Comments were received from several of the commenters adverse to the jurisdiction of the Commission to promulgate these rules. The Commission's staff anticipated these arguments in their comments and presented arguments supporting the Commission's jurisdiction.

**RESPONSE:** The Commission's rulemaking authority is based on proper legal authority and the Commission has jurisdiction to adopt these rules.

**COMMENT:** Comments were received from several of the commenters suggesting that contested case procedures should be followed in the promulgation of these rules. Related comments addressed whether witnesses at the public hearings should be sworn.

**RESPONSE:** The Commission has followed proper rulemaking procedures to adopt these rules.

**COMMENT:** A purpose of the rule is to prevent regulated utilities from subsidizing their unregulated operations. This would occur where costs of unregulated operations are shifted to ratepayers for regulated operations or where subsidies are provided to unregulated operations through preferential service or treatment, including pricing. All commenters in support of the rule agreed with the Commission's intended purpose. Commenters in support urged more stringent limits on preferential service or treatment. Most commenters in opposition expressed the view that cost shifting should be limited rather than prevented and that some limits on preferential service or treatment should be imposed but suggested that the proposed rule went too far on both types of subsidies.

**RESPONSE:** Generally, the rule as proposed, presents a moderate approach by the Commission. Other states that have adopted rules have taken approaches that were more stringent or approaches that were less stringent. The rulemaking record supports full, effective limitations on cost shifting. With respect to preferential service or treatment, the rulemaking record supports clarifying changes and making changes to allow more flexibility to regulated utilities. In most matters more stringent standards of conduct were not supported at this time.

**COMMENT:** Several commenters objected to the use of fully distributed costs (FDC) and "asymmetrical pricing" under section (3). Under the proposed rule, cost shifting and other subsidies are prohibited by application of the pricing standard under section (3). The standard uses both FDC and fair market price (FMP). FDC is a costing methodology that accounts for all costs by assigning all costs used to produce a good or service through a direct or allocated approach or a combination of direct and allocated costs. Under the standard, when a regulated utility acquires goods or services from an affiliate entity it may not pay more than the FDC for the utility to produce the good or service for itself or FMP, whichever is less. When a regulated utility transfers goods or services to an affiliate entity it must obtain the greater of FMP or FDC to the regulated utility. The term asymmetrical pricing refers to the fact that the pricing standard is reversed depending upon whether the regulated utility is buying or is selling.

**RESPONSE:** FDC assures that all costs are accounted and recovered and FMP, in conjunction with FDC, assures that the regulated utilities obtain the best prices or lowest costs possible whether buying or selling or producing goods or services. Asymmetrical pricing assures that the pricing standard is always applied to the favor of regulated utility's customers. The commenters that objected to FDC and asymmetrical pricing proposed costing methodologies that would not fully account for direct costs, indirect costs and opportunity costs or that would permit transactions to occur at a pricing standard that was not optimized to ratepayers. The alternative proposals would allow cost shifting to occur so long as a direct cost increase did not result for ratepayers. Prices for regulated goods and services would be higher over time than if the affiliate transactions occurred using FMP, FDC and asymmetrical pricing. These opponents to the proposed standard believed that transactions reflecting economies of scope and scale would be discouraged, even to the point that the affiliate transactions would not occur at all, and that incremental or marginal benefits under a less stringent standard would be lost to ratepayers. The Commission does not find this assertion to be credible. Foregoing opportunity costs or shifting the costs of unregulated activities to ratepayers will not generally be in the interests of ratepayers, or for that matter, the longer term interests of the regulated companies. If the cost shifting occurs to enhance profits for already profitable unregulated activities then ratepayers are being victimized to obtain predatory profits. The result would be a regulatory and ratepayer backlash. If the cost shifting occurs because the costs of the regulated company and its affiliates are higher than the costs of competitors

then ratepayers are again being victimized, and, in addition the Commission would be allowing the misallocation of economic resources to keep an inefficient competitor in business. The solution here is to cut costs, a move that would benefit ratepayers, shareholders and consumers. If the cost shifting occurs merely to increase the rate of return in an otherwise low margin venture that shareholders would disapprove, ratepayers are again being victimized. The solution is to select ventures that offer an acceptable rate of return and to avoid those that do not. Economies of scope and scale do not result from shifting costs or foregoing profitable pricing opportunities; they result from the efficient and maximized application of resources. A company or group of companies in exclusively competitive markets may experience circumstances where shifting costs or foregoing profitable pricing opportunities serves a business purpose but those circumstances will be tempered by competition, particularly over the long run. A company or group of companies in mixed competitive and regulated markets has incentives to shift costs or forego profitable pricing opportunities that are not tempered by competition, but by regulators. The interests of ratepayers are not served by paying the costs of producing and selling goods and services that they are not buying. Section (11) of the rule permits variances. To the extent that circumstances occur where the best interests of ratepayers would be served by permitting cost shifting to occur for a period of time a waiver could be obtained.

**COMMENT:** Several commenters in support of the proposed rule advocated additional and more stringent standards to be added in a new section (2) regarding access to customer information, marketing activities including use of names and logos, some degree of physical separation from affiliates, and restrictions on the transfer of employees.

**RESPONSE:** Generally, additional and more stringent standards are not required. The record shows that the most likely competitors to affiliates of incumbent utilities are large, national or international corporations that have similar or equivalent competitive strengths. It is not the intent or purpose of the proposed rules to handicap any competitor. Doing so would be detrimental to both ratepayers and consumers, resulting in higher costs or less information for ratepayers and consumers. In most cases, the interests of ratepayers will be best served by simply assuring that costs are not shifted to them. In a few instances preferential service or treatment derived from regulated activity or resources should be limited where an unfair advantage is provided to an affiliate entity over its competitors.

**COMMENT:** Several commenters asserted that the record keeping and documentation requirements for regulated utilities and their affiliates would be unduly burdensome and costly, ultimately to the detriment of ratepayers.

**RESPONSE:** The anticipated fiscal costs for the proposed rule appear modest and not unduly burdensome. Industry input was requested and considered to develop the estimated fiscal impact. The rulemaking record shows that without the record keeping and documentation requirements it would be either impossible to obtain the information necessary to implement the rule or even more costly to implement the rule through more elaborate and time consuming regulatory audits. Many implementation costs, such as development of cost allocation manuals (CAM), would not be reoccurring. Some utilities already have costing and documentation methodologies in place that would satisfy many of the requirements of the proposed rule. There will be additional accounting and documentation requirements as a result of this rule. However, existing systems that already provide useful information would not be duplicated. Verifying FDC and FMP could produce benefits unrelated to regulatory requirements by providing data to support more efficient market based decision making and allocation of resources by the regulated utilities. Finally, the rule allows a great deal of flexibility to customize CAMs and to obtain variances

where circumstances merit. The degree and detail of record keeping and documentation can be varied so that the cost of the regulation does not outweigh the benefits afforded.

**COMMENT:** Some commenters, both in support and in opposition, suggested a change to the rule to establish a defined dollar threshold for an exemption from certain compliance requirements. **RESPONSE:** This type of exception can be addressed through individual variances under the rule. Companies will vary greatly in size, activities and the methods of implementing compliance systems.

**COMMENT:** Comments were received suggesting that a definition be provided for the term "corporate support" in order to allow greater flexibility to obtain economies in certain areas.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission accepts this suggestion and has added a definition for this term in section (1). Subsection (3)(B) has been modified to provide greater flexibility in that standard.

**COMMENT:** Comments were received suggesting that a definition be provided for the term "information" since certain standards limit the provision of "preferential" "information" to affiliates and the meaning or scope is not clear.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission accepts this suggestion and has added a definition for this term in section (1).

**COMMENT:** Comments were received suggesting that a definition be provided for the term "unfair advantage" since certain definitions and standards use this term and the meaning or scope is not clear.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission accepts this suggestion and has added a definition for this term in section (1).

**COMMENT:** Comments were received suggesting the definition of "affiliate entity" posed Hancock Amendment issues and that the definition was not clear as to its application to departments within utilities.

**RESPONSE:** The Commission does not agree with these comments and did not change this definition.

**COMMENT:** Comments were received regarding the definition of "control" and particularly regarding the presumption of control based on the beneficial ownership of ten percent or more of voting securities or partnership interest. Comments either supported this presumption or criticized it and offered a presumption only at the fifty percent level.

**RESPONSE:** The Commission has not changed this definition. The record supports the reasonableness of the presumption as a general measure of an effective controlling interest. This presumption will aid in reducing regulatory burdens and costs. The presumption is not absolute and it is expressly rebuttable. A fifty percent presumption would not serve any efficient regulatory purpose since, in almost every case, it would represent both effective and absolute control.

**COMMENT:** Comments were received suggesting that this rule, which contains additional provisions specifically addressing conduct of regulated gas companies toward gas marketing affiliates could be combined into proposed rule 4 CSR 240-40.016.

**RESPONSE AND EXPLANATION OF CHANGE:** The rules will not be combined at this time. However, section (2) has been re-titled and a subsection added to make clear that the additional non-discrimination standards concerning marketing affiliates are to be applied in conjunction with all the standards presented in the rule.

**COMMENT:** Comments were received concerning the burden, effectiveness and the need for non-discrimination standards segregating employees, limiting access to employees and controlling support services.

**RESPONSE AND EXPLANATION OF CHANGE:** The rule-making area does not show that these areas have been abused. The record also shows that these areas present economies of scope and scale and possible competitive advantages for incumbent utilities and marketing affiliates. However, restrictions in these areas at this time would represent an undue handicap to the marketing affiliate. Non-affiliated marketers will have to make-do with fair, though less convenient, access and purchase support services at market rates. Subsections (G), (H), and (J) have been deleted from the rule and the subsections have been relettered accordingly.

**COMMENT:** Comments were received concerning joint marketing and the need for consumers to know whom they are doing business with.

**RESPONSE AND EXPLANATION OF CHANGE:** The Commission agrees and has deleted subsection (I) from section (2) and modified subsection (R) to remove restrictions limiting the information that a regulated gas corporation may provide about a marketing affiliate. This subsection has also been relettered as (O).

**COMMENT:** Comments were received regarding the appropriateness of limiting employee transfers between regulated utilities and affiliates and the application of the pricing standards to these transfers under section (3). Several commenters noted the difficulty of pricing an employee or trained employee services. One commenter suggested simply establishing a fixed fee.

**RESPONSE AND EXPLANATION OF CHANGE:** Commenters offering explanations of how an employee or trained employee would be valued were not consistent or clear. Commenters acknowledged that valued employees could go to work for a non-affiliated competitor and there would be no payment to the regulated utility at all. Under these circumstances any payment appears to be more of a penalty or a handicap to an incumbent utility and its affiliate entities than a means to prevent cost shifting or unfair preferential treatment. The standards are properly directed at preventing cost shifting and subsidies. This purpose can be accomplished by focusing on the pricing of information and providing fair access to information. Employee transfers do not have to be restricted, penalized or compensated to accomplish this purpose. The Commission has deleted the descriptive list that included the term "trained employees" from paragraph (3)(A)2.

**COMMENT:** Comments were received from several commenters regarding section (3) concerning the provision of information to consumers and referrals for services provided by a regulated utility regarding an affiliate entity or its competitors. Some commenters proposed that the regulated utility provide information and referrals for competitors or references to marketing or referral services. Some commenters opposed any additional requirements and still others opposed any forced marketing on the behalf of competitors.

**RESPONSE AND EXPLANATION OF CHANGE:** The rule is not intended to handicap incumbent utilities or their affiliated entities. Maintaining a referral list would be an undue and costly burden. Specific nondiscrimination standards under section (2) address the provision of information to consumers and referral information for services based on the unique advantages that a gas marketing affiliate would otherwise have over a nonaffiliate marketing entity. Similar or more stringent standards are not required for non-marketing entities. Even referral to commercial marketing resources or listings is unfair in that competitors will not be under any reciprocal requirement. As noted previously, competitors are most likely to be large national and international companies with their own marketing capabilities. The abuse or potential abuse to guard against is the possible perception that regulated services and

unregulated goods or services are tied or are both regulated services. The Commission has made clarifying changes to this provision and added a subsection to assure that consumers are aware that affiliate entity services are not regulated services.

COMMENT: Several commenters suggested an additional standard to prohibit tying. One commenter noted that existing state and federal antitrust laws already address this matter.

RESPONSE AND EXPLANATION OF CHANGE: A standard expressly prohibiting tying is not required. An addition to the rule discussed below assures that state and federal antitrust laws remain applicable.

COMMENT: Several commenters suggested a specific standard related to providing information about customers.

RESPONSE: The rule as proposed addresses pricing and preferential access for information. However, the suggested standard would incorporate reasonable consumer and ratepayer protections and is desirable. This additional standard has been incorporated into the rule in an additional subsection in section (3).

COMMENT: Comments were received that suggested that approval of a CAM addressing certain matters should suffice for later ratemaking purposes concerning the same matters. The commenters also suggested that information presented in a CAM should be limited to Missouri operations and that non-regulated activities constituting less than ten percent of revenues should be treated as regulated activity and exempted from the rule requirements.

RESPONSE: The Commission does not anticipate that there will be significant cases where ratemaking treatment will be inconsistent with a CAM. However, a CAM addresses or anticipates many issues in a prospective fashion. Additional information may often come to light and be considered in a ratemaking proceeding. In a ratemaking proceeding the CAM does not bind the regulated utility or the Commission. This flexibility does not harm any interest. The rule allows for variances should it be desirable to grant them.

COMMENT: Two commenters recommended that the regulated utility maintain its books, accounts and records separate from those of its affiliates.

RESPONSE AND EXPLANATION OF CHANGE: This change would assist implementation of the rule and has been added to section (5).

COMMENT: A commenter suggested that section (5) include a record keeping requirement to list employee movement between the regulated utility and affiliated entities.

RESPONSE: This is a burdensome requirement that is not necessary based on the information presented in this rulemaking proceeding.

COMMENT: Some commenters suggested exempting small regulated utilities from the rule.

RESPONSE: This is a matter that could be taken up under a variance request.

COMMENT: Some commenters suggested that regulated utilities should train and advise their employees concerning the requirements of this rule.

RESPONSE AND EXPLANATION OF CHANGE: This change would assist in successfully implementing the rule. An additional section has been added to the rule for this change.

COMMENT: Some commenters expressed uncertainty as to the permissible scope of variances under the rule.

RESPONSE AND EXPLANATION OF CHANGE: This section has been renumbered from (10) to (11). The scope and terms of variances, whether partial or complete, under section (11) will be determined by the facts and circumstances found in support of the application. Section (11) has been clarified.

COMMENT: Some commenters referred to antitrust provisions and compared antitrust concepts to the proposed rules in their statements. The proposed rules address similar competitive and monopoly power issues.

RESPONSE AND EXPLANATION OF CHANGE: Under the Missouri Antitrust Law activities or arrangements expressly approved or regulated by a regulatory body of the state may be exempted from the antitrust law. It is not the Commission's intent to create any exemptions. An additional section has been added to the rule to clarify the Commission's intent.

#### 4 CSR 240-40.016 Marketing Affiliate Transactions

##### (1) Definitions.

(A) Affiliated entity means any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county, or a combination of political subdivisions, which directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated gas corporation. This term shall also include "marketing affiliate" (as hereinafter defined) and all unregulated business operations of a regulated gas corporation.

(B) Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated gas corporation and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated gas corporation and the regulated business operations of a gas corporation. An affiliate transaction for the purposes of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754, RSMo by the General Assembly of Missouri.

(C) Control (including the terms "controlling," "controlled by," and "common control") means the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one (1) or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule. This provision, however, shall not be construed to prohibit a regulated gas corporation from rebutting the presumption that its ownership interest in an entity confers control.

(D) Corporate support means joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.

(E) Derivatives means a financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., "derived from") the value of one (1) or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments, or any agreed-upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates). Derivatives involve the trading of rights or

obligations based on the underlying product, but do not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for a fixed rate of return.

(F) Fully distributed cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated (e.g., general and administrative) must also be included in the FDC calculation through a general allocation.

(G) Information means any data obtained by a regulated gas corporation that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(H) Long term means a transaction in excess of thirty-one (31) days.

(I) Marketing affiliate means an affiliated entity which engages in or arranges a commission-related sale of any natural gas service or portion of gas service, to a shipper.

(J) Opportunity sales means sales of unused contract entitlements necessarily held by a gas corporation to meet the daily and seasonal swings of its system customers and are intended to maximize utilization of assets that remain under regulation.

(K) Preferential service means information, treatment or actions by the regulated gas corporation which places the affiliated entity at an unfair advantage over its competitors.

(L) Regulated gas corporation means every gas corporation as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapter 393, RSMo.

(M) Shippers means all current and potential transportation customers on a regulated gas corporation's natural gas distribution system.

(N) Short-term means a transaction of thirty-one (31) days or less.

(O) Transportation means the receipt of gas at one point on a regulated gas corporation's system and the redelivery of an equivalent volume of gas to the retail customer of the gas at another point on the regulated gas corporation's system including, without limitation, scheduling, balancing, peaking, storage, and exchange to the extent such services are provided pursuant to the regulated gas corporation's tariff, and includes opportunity sales.

(P) Unfair advantage means an advantage that cannot be obtained by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(Q) Variance means an exemption granted by the commission from any applicable standard required pursuant to this rule.

(2) Nondiscrimination Standards.

(A) Nondiscrimination standards under this section apply in conjunction with all the standards under this rule and control when a similar standard overlaps.

(B) A regulated gas corporation shall apply all tariff provisions relating to transportation in the same manner to customers similarly situated whether they use affiliated or nonaffiliated marketers or brokers.

(C) A regulated gas corporation shall uniformly enforce its tariff provisions for all shippers.

(D) A regulated gas corporation shall not, through a tariff provision or otherwise, give its marketing affiliate and/or its customers, any preference over a customer using a nonaffiliated marketer in matters relating to transportation or curtailment priority.

(E) A regulated gas corporation shall not give any customer using its marketing affiliate a preference, in the processing of a request for transportation services, over a customer using a nonaffiliated marketer, specifically including the manner and timing of such processing.

(F) A regulated gas corporation shall not disclose or cause to be disclosed to its marketing affiliate or any nonaffiliated marketer any information that it receives through its processing of requests for or provision of transportation.

(G) If a regulated gas corporation provides information related to transportation which is not readily available or generally known to other marketers to a customer using a marketing affiliate, it shall provide that information (electronic format, phone call, facsimile, etc.) contemporaneously to all nonaffiliated marketers transporting on its distribution system.

(H) A regulated gas corporation shall not condition or tie an offer or agreement to provide a transportation discount to a shipper to any service in which the marketing affiliate is involved. If the regulated gas corporation seeks to provide a discount for transportation to any shipper using a marketing affiliate, the regulated gas corporation shall, subject to an appropriate protective order—

1. File for approval of the transaction with the commission and provide a copy to the Office of the Public Counsel;

2. Disclose whether the marketing affiliate of the regulated gas corporation is the gas supplier or broker serving the shipper;

3. File quarterly public reports which provide the aggregate periodic and cumulative number of transportation discounts provided by the regulated gas corporation; and

4. Provide the aggregate number of such agreements which involve shippers for whom the regulated gas corporation's marketing affiliate is or was at the time of the granting of the discount the gas supplier or broker.

(I) A regulated gas corporation shall not make opportunity sales directly to a customer of its marketing affiliate or to its marketing affiliate unless such supplies and/or capacity are made available to other similarly situated customers using nonaffiliated marketers on an identical basis given the nature of the transactions.

(J) A regulated gas corporation shall not condition or tie agreements (including prearranged capacity release) for the release of interstate or intrastate pipeline capacity to any service in which the marketing affiliate is involved under terms not offered to nonaffiliated companies and their customers.

(K) A regulated gas corporation shall maintain its books of account and records completely separate and apart from those of the marketing affiliate.

(L) A regulated gas corporation is prohibited from giving any customer using its marketing affiliate preference with respect to any tariff provisions that provide discretionary waivers.

(M) A regulated gas corporation shall maintain records when it is made aware of any marketing complaint against an affiliated entity—

1. The records should contain a log detailing the date the complaint was received by the regulated gas corporation, the name of the complainant, a brief description of the complaint and, as applicable, how it was been resolved. If the complaint has not been recorded by the regulated gas corporation within thirty (30) days, an explanation for the delay must be recorded.

(N) A regulated gas corporation will not communicate to any customer, supplier or third parties that any advantage may accrue to such customer, supplier or third party in the use of the regulated gas corporation's services as a result of that customer, supplier or third party dealing with its marketing affiliate and shall refrain from giving any appearance that it speaks on behalf of its affiliated entity.

(O) If a customer requests information about a marketing affiliate, the regulated gas corporation may provide the requested information but shall also provide a list of all marketers operating on its system.

(3) Standards.

(A) A regulated gas corporation shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated gas corporation shall be deemed to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for information, assets, goods or services above the lesser of—

A. The fair market price; or

B. The fully distributed cost to the regulated gas corporation to provide the information, assets, goods or services for itself; or

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—

A. The fair market price; or

B. The fully distributed cost to the regulated gas corporation.

(B) Except as necessary to provide corporate support functions, the regulated gas corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

(C) Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. General or aggregated customer information shall be made available to affiliated or unaffiliated entities upon similar terms and conditions. The regulated gas corporation may set reasonable charges for costs incurred in producing customer information. Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities.

(D) The regulated gas corporation shall not participate in any affiliated transactions which are not in compliance with this rule, except as otherwise provided in section (11) of this rule.

(E) If a customer requests information from the regulated gas corporation about goods or services provided by an affiliated entity, the regulated gas corporation may provide information about the affiliate but must inform the customer that regulated services are not tied to the use of an affiliate provider and that other service providers may be available. Except with respect to affiliated and nonaffiliated gas marketers which are addressed in section (2) of this rule, the regulated gas corporation may provide reference to other service providers or to commercial listings, but is not required to do so. The regulated gas corporation shall include in its annual Cost Allocation Manual (CAM), the criteria, guidelines and procedures it will follow to be in compliance with the rule.

(F) Marketing materials, information or advertisements by an affiliate entity that share an exact or similar name, logo or trademark of the regulated utility shall clearly display or announce that the affiliate entity is not regulated by the Missouri Public Service Commission.

#### (5) Record Keeping Requirements.

(A) A regulated gas corporation shall maintain books, accounts and records separate from those of its affiliates.

(B) Each regulated gas corporation shall maintain the following information in a mutually agreed-to electronic format (i.e., agreement between the staff, Office of the Public Counsel and the regulated gas corporation) regarding affiliate transactions on a calendar year basis and shall provide such information to the commission staff and the Office of the Public Counsel on, or before, March 15 of the succeeding year:

1. A full and complete list of all affiliated entities as defined by this rule;

2. A full and complete list of all goods and services provided to or received from affiliated entities;

3. A full and complete list of all contracts entered with affiliated entities;

4. A full and complete list of all affiliate transactions undertaken with affiliated entities without a written contract together with a brief explanation of why there was no contract;

5. The amount of all affiliate transactions, by affiliated entity and account charged; and

6. The basis used (e.g., market value, book value, etc.) to record each type of affiliate transaction.

(C) In addition each regulated gas corporation shall maintain the following information regarding affiliate transactions on a calendar year basis:

1. Records identifying the basis used (e.g., fair market price, fully distributed cost, etc.) to record all affiliate transactions; and

2. Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.

(10) The regulated gas corporation shall train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance.

#### (11) Variances.

(A) A variance from the standards in this rule may be obtained by compliance with paragraphs (11)(A)1. or (11)(A)2. The granting of a variance to one regulated gas corporation does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated gas corporation to comply with the standards. The scope of a variance will be determined based on the facts and circumstances found in support of the application—

1. The regulated gas corporation shall request a variance upon written application in accordance with commission procedures set out in 4 CSR 240-2.060 (11); or

2. A regulated gas corporation may engage in an affiliate transaction not in compliance with the standards set out in subsection (2)(A) of this rule, when to its best knowledge and belief, compliance with the standards would not be in the best interests of its regulated customers and it complies with the procedures required by subparagraphs (11)(A)2.A. and (11)(A)2.B. of this rule—

A. All reports and record retention requirements for each affiliate transaction must be complied with; and

B. Notice of the noncomplying affiliate transaction shall be filed with the secretary of the commission and the Office of the Public Counsel within ten (10) days of the occurrence of the noncomplying affiliate transaction. The notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of subsection (2)(A), and shall provide a detailed explanation of how the affiliate transaction was in the best interests of the regulated customers. Within thirty (30) days of the notice of the noncomplying affiliate transaction, any party shall have the right to request a hearing regarding the noncomplying affiliate transaction. The commission may grant or deny the request for hearing at that time. If the commission denies a request for hearing, the denial shall not in any way prejudice a party's ability to challenge the affiliate transaction at the time of the annual CAM filing. At the time of the filing of the regulated gas corporation's annual CAM filing the regulated gas corporation shall provide to the secretary of the commission a listing of all noncomplying affiliate transactions which occurred between the period of the last filing and the current filing. Any affiliate transaction submitted pursuant to this section shall remain interim, subject to disallowance, pending final commission determination on whether the noncomplying affiliate transaction resulted in the best interests of the regulated customers.

(12) Nothing contained in this rule and no action by the commission under this rule shall be construed to approve or exempt any activity or arrangement that would violate the antitrust laws of the state of Missouri or of the United States or to limit the rights of any person or entity under those laws.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 240—Public Service Commission  
Chapter 80—Steam Heating Utilities**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Public Service Commission under sections 386.250, RSMo Supp. 1999 and 393.140, RSMo 1994, the commission adopts a rule as follows:

4 CSR 240-80.015 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 1999 (24 MoReg 1359-1364). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** This order of rulemaking was approved by the Missouri Public Service Commission with one dissenting opinion that has been filed with the Commission's Secretary. Extensive written comments and reply comments were submitted and public hearings were held on September 13, 14 and 15, 1999. The Commission's staff supported the proposed rule with a few suggested changes based on the other comments received. The Office of Public Counsel and others in support of the rule advocated for more stringent provisions. Comments from the regulated utilities supported less stringent provisions or opposed adoption of the rule.

**COMMENT:** Comments were received from several of the commenters adverse to the jurisdiction of the Commission to promulgate these rules. The Commission's staff anticipated these arguments in their comments and presented arguments supporting the Commission's jurisdiction.

**RESPONSE:** The Commission's rulemaking authority is based on proper legal authority and the Commission has jurisdiction to adopt these rules.

**COMMENT:** Comments were received from several of the commenters suggesting that contested case procedures should be followed in the promulgation of these rules. Related comments addressed whether witnesses at the public hearings should be sworn.

**RESPONSE:** The Commission has followed proper rulemaking procedures to adopt these rules.

**COMMENT:** A purpose of the rule is to prevent regulated utilities from subsidizing their unregulated operations. This would occur where costs of unregulated operations are shifted to ratepayers for regulated operations or where subsidies are provided to unregulated operations through preferential service or treatment, including pricing. All commenters in support of the rule agreed with the Commission's intended purpose. Commenters in support urged more stringent limits on preferential service or treatment. Most commenters in opposition expressed the view that cost shifting should be limited rather than prevented and that some limits on preferential service or treatment should be imposed but suggested that the proposed rule went too far on both types of subsidies.

**RESPONSE:** Generally, the rule as proposed, presents a moderate approach by the Commission. Other states that have adopted rules have taken approaches that were more stringent or approaches that were less stringent. The rulemaking record supports full, effective limitations on cost shifting. With respect to preferential service or treatment, the rulemaking record supports clarifying changes and making changes to allow more flexibility to regulated utilities. In most matters more stringent standards of conduct were not supported at this time.

**COMMENT:** Several commenters objected to the use of fully distributed costs (FDC) and "asymmetrical pricing" under section (2). Under the proposed rule, cost shifting and other subsidies are prohibited by application of the pricing standard under section (2). The standard uses both FDC and fair market price (FMP). FDC is a costing methodology that accounts for all costs by assigning all costs used to produce a good or service through a direct or allocated approach or a combination of direct and allocated costs. Under the standard, when a regulated utility acquires goods or services from an affiliate entity it may not pay more than the FDC for the utility to produce the good or service for itself or FMP, whichever is less. When a regulated utility transfers goods or services to an affiliate entity it must obtain the greater of FMP or FDC to the regulated utility. The term asymmetrical pricing refers to the fact that the pricing standard is reversed depending upon whether the regulated utility is buying or is selling.

**RESPONSE:** FDC assures that all costs are accounted and recovered and FMP, in conjunction with FDC, assures that the regulated utilities obtain the best prices or lowest costs possible whether buying or selling or producing goods or services. Asymmetrical pricing assures that the pricing standard is always applied to the favor of regulated utility's customers. The commenters that objected to FDC and asymmetrical pricing proposed costing methodologies that would not fully account for direct costs, indirect costs and opportunity costs or that would permit transactions to occur at a pricing standard that was not optimized to ratepayers. The alternative proposals would allow cost shifting to occur so long as a direct cost increase did not result for ratepayers. Prices for regulated goods and services would be higher over time than if the affiliate transactions occurred using FMP, FDC and asymmetrical pricing. These opponents to the proposed standard believed that transactions reflecting economies of scope and scale would be discouraged, even to the point that the affiliate transactions would not occur at all, and that incremental or marginal benefits under a less stringent standard would be lost to ratepayers. The Commission does not find this assertion to be credible. Foregoing opportunity costs or shifting the costs of unregulated activities to ratepayers will not generally be in the interests of ratepayers, or for that matter, the longer term interests of the regulated companies. If the cost shifting occurs to enhance profits for already profitable unregulated activities then ratepayers are being victimized to obtain predatory profits. The result would be a regulatory and ratepayer backlash. If the cost shifting occurs because the costs of the regulated company and its affiliates are higher than the costs of competitors then ratepayers are again being victimized, and, in addition the Commission would be allowing the misallocation of economic resources to keep an inefficient competitor in business. The solution here is to cut costs, a move that would benefit ratepayers, shareholders and consumers. If the cost shifting occurs merely to increase the rate of return in an otherwise low margin venture that shareholders would disapprove, ratepayers are again being victimized. The solution is to select ventures that offer an acceptable rate of return and to avoid those that do not. Economies of scope and scale do not result from shifting costs or foregoing profitable pricing opportunities; they result from the efficient and maximized application of resources. A company or group of companies in exclusively competitive markets may experience circumstances where shifting costs or foregoing profitable pricing opportunities serves a business purpose but those circumstances will be tempered by competition, particularly over the long run. A company or group of companies in mixed competitive and regulated markets has incentives to shift costs or forego profitable pricing opportunities that are not tempered by competition, but by regulators. The interests of ratepayers are not served by paying the costs of producing and selling goods and services that they are not buying. Section (10) of the rule permits variances. To the extent that circumstances occur where the best interests of ratepayers would be served by permitting cost shifting to occur for a period of time a waiver could be obtained.

COMMENT: Several commenters in support of the proposed rule advocated additional and more stringent standards to be added in a new section (2) regarding access to customer information, marketing activities including use of names and logos, some degree of physical separation from affiliates, and restrictions on the transfer of employees.

RESPONSE: Generally, additional and more stringent standards are not required. The record shows that the most likely competitors to affiliates of incumbent utilities are large, national or international corporations that have similar or equivalent competitive strengths. It is not the intent or purpose of the proposed rules to handicap any competitor. Doing so would be detrimental to both ratepayers and consumers, resulting in higher costs or less information for ratepayers and consumers. In most cases, the interests of ratepayers will be best served by simply assuring that costs are not shifted to them. In a few instances preferential service or treatment derived from regulated activity or resources should be limited where an unfair advantage is provided to an affiliate entity over its competitors.

COMMENT: Several commenters asserted that the record keeping and documentation requirements for regulated utilities and their affiliates would be unduly burdensome and costly, ultimately to the detriment of ratepayers.

RESPONSE: The anticipated fiscal costs for the proposed rule appear modest and not unduly burdensome. Industry input was requested and considered to develop the estimated fiscal impact. The rulemaking record shows that without the record keeping and documentation requirements it would be either impossible to obtain the information necessary to implement the rule or even more costly to implement the rule through more elaborate and time consuming regulatory audits. Many implementation costs, such as development of cost allocation manuals (CAM), would not be reoccurring. Some utilities already have costing and documentation methodologies in place that would satisfy many of the requirements of the proposed rule. There will be additional accounting and documentation requirements as a result of this rule. However, existing systems that already provide useful information would not be duplicated. Verifying FDC and FMP could produce benefits unrelated to regulatory requirements by providing data to support more efficient market based decision making and allocation of resources by the regulated utilities. Finally, the rule allows a great deal of flexibility to customize CAMs and to obtain variances where circumstances merit. The degree and detail of record keeping and documentation can be varied so that the cost of the regulation does not outweigh the benefits afforded.

COMMENT: Some commenters, both in support and in opposition, suggested a change to the rule to establish a defined dollar threshold for an exemption from certain compliance requirements.

RESPONSE: This type of exception can be addressed through individual variances under the rule. Companies will vary greatly in size, activities and the methods of implementing compliance systems.

COMMENT: Comments were received suggesting that a definition be provided for the term "corporate support" in order to allow greater flexibility to obtain economies in certain areas.

RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1). Subsection (2)(B) has been modified to provide greater flexibility in that standard.

COMMENT: Comments were received suggesting that a definition be provided for the term "information" since certain standards limit the provision of "preferential" "information" to affiliates and the meaning or scope is not clear.

RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1).

COMMENT: Comments were received suggesting that a definition be provided for the term "unfair advantage" since certain definitions and standards use this term and the meaning or scope is not clear.

RESPONSE AND EXPLANATION OF CHANGE: The Commission accepts this suggestion and has added a definition for this term in section (1).

COMMENT: Comments were received suggesting the definition of "affiliate entity" posed Hancock Amendment issues and that the definition was not clear as to its application to departments within utilities.

RESPONSE: The Commission does not agree with these comments and did not change this definition.

COMMENT: Comments were received regarding the definition of "control" and particularly regarding the presumption of control based on the beneficial ownership of ten percent or more of voting securities or partnership interest. Comments either supported this presumption or criticized it and offered a presumption only at the fifty percent level.

RESPONSE: The Commission has not changed this definition. The record supports the reasonableness of the presumption as a general measure of an effective controlling interest. This presumption will aid in reducing regulatory burdens and costs. The presumption is not absolute and it is expressly rebuttable. A fifty percent presumption would not serve any efficient regulatory purpose since, in almost every case, it would represent both effective and absolute control.

COMMENT: Comments were received regarding the appropriateness of limiting employee transfers between regulated utilities and affiliates and the application of the pricing standards to these transfers under section (2). Several commenters noted the difficulty of pricing an employee or trained employee services. One commenter suggested simply establishing a fixed fee.

RESPONSE AND EXPLANATION OF CHANGE: Commenters offering explanations of how an employee or trained employee would be valued were not consistent or clear. Commenters acknowledged that valued employees could go to work for a non-affiliated competitor and there would be no payment to the regulated utility at all. Under these circumstances any payment appears to be more of a penalty or a handicap to an incumbent utility and its affiliate entities than a means to prevent cost shifting or unfair preferential treatment. The standards are properly directed at preventing cost shifting and subsidies. This purpose can be accomplished by focusing on the pricing of information and providing fair access to information. Employee transfers do not have to be restricted, penalized or compensated to accomplish this purpose. The Commission has deleted the descriptive list that included the term "trained employees" from paragraph (2)(A)2.

COMMENT: Comments were received from several commenters regarding section (2) concerning the provision of information to consumers and referrals for services provided by a regulated utility regarding an affiliate entity or its competitors. Some commenters proposed that the regulated utility provide information and referrals for competitors or references to marketing or referral services. Some commenters opposed any additional requirements and still others opposed any forced marketing on the behalf of competitors.

RESPONSE AND EXPLANATION OF CHANGE: The rule is not intended to handicap incumbent utilities or their affiliated entities. Maintaining a referral list would be an undue and costly burden. Even referral to commercial marketing resources or listings is unfair in that competitors will not be under any reciprocal requirement. As noted previously, competitors are most likely to be large national and international companies with their own marketing capabilities. The abuse or potential abuse to guard against is the possible perception that regulated services and unregulated goods

or services are tied or are both regulated services. The Commission has made clarifying changes to this provision and added a subsection to assure that consumers are aware that affiliate entity services are not regulated services.

COMMENT: Several commenters suggested an additional standard to prohibit tying. One commenter noted that existing state and federal antitrust laws already address this matter.

RESPONSE: A standard expressly prohibiting tying is not required. An addition to the rule discussed below assures that state and federal antitrust laws remain applicable.

COMMENT: Several commenters suggested a specific standard related to providing information about customers.

RESPONSE AND EXPLANATION OF CHANGE: The rule as proposed addresses pricing and preferential access for information. However, the suggested standard would incorporate reasonable consumer and ratepayer protections and is desirable. This additional standard has been incorporated into the rule in an additional subsection in section (2).

COMMENT: Comments were received that suggested that approval of a CAM addressing certain matters should suffice for later ratemaking purposes concerning the same matters. The commenters also suggested that information presented in a CAM should be limited to Missouri operations and that non-regulated activities constituting less than ten percent of revenues should be treated as regulated activity and exempted from the rule requirements.

RESPONSE: The Commission does not anticipate that there will be significant cases where ratemaking treatment will be inconsistent with a CAM. However, a CAM addresses or anticipates many issues in a prospective fashion. Additional information may often come to light and be considered in a ratemaking proceeding. In a ratemaking proceeding the CAM does not bind the regulated utility or the Commission. This flexibility does not harm any interest. The rule allows for variances should it be desirable to grant them.

COMMENT: Two commenters recommended that the regulated utility maintain its books, accounts and records separate from those of its affiliates.

RESPONSE AND EXPLANATION OF CHANGE: This change would assist implementation of the rule and has been added to section (4).

COMMENT: A commenter suggested that section (4) include a record-keeping requirement to list employee movement between the regulated utility and affiliated entities.

RESPONSE: This is a burdensome requirement that is not necessary based on the information presented in this rulemaking proceeding.

COMMENT: Some commenters suggested exempting small regulated utilities from the rule.

RESPONSE: This is a matter that could be taken up under a variance request.

COMMENT: Some commenters expressed uncertainty as to the permissible scope of variances under the rule.

RESPONSE AND EXPLANATION OF CHANGE: This section has been renumbered from (9) to (10). The scope and terms of variances, whether partial or complete, under section (10) will be determined by the facts and circumstances found in support of the application. Section (10) has been clarified.

COMMENT: Some commenters suggested that regulated utilities should train and advise their employees concerning the requirements of this rule.

RESPONSE AND EXPLANATION OF CHANGE: This change would assist in successfully implementing the rule. An additional

section has been added to the rule for this change.

COMMENT: Some commenters referred to antitrust provisions and compared antitrust concepts to the proposed rules in their statements. The proposed rules address similar competitive and monopoly power issues.

RESPONSE AND EXPLANATION OF CHANGE: Under the Missouri Antitrust Law activities or arrangements expressly approved or regulated by a regulatory body of the state may be exempted from the antitrust law. It is not the Commission's intent to create any exemptions. An additional section has been added to the rule to clarify the Commission's intent.

#### 4 CSR 240-80.015 Affiliate Transactions

##### (1) Definitions.

(A) Affiliated entity means any person, including an individual, corporation, service company, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political subdivision including a public utility district, city, town, county or a combination of political subdivisions which, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with the regulated heating company.

(B) Affiliate transaction means any transaction for the provision, purchase or sale of any information, asset, product or service, or portion of any product or service, between a regulated heating company and an affiliated entity, and shall include all transactions carried out between any unregulated business operation of a regulated heating company and the regulated business operations of a heating company. An affiliate transaction for the purposes of this rule excludes heating, ventilating and air conditioning (HVAC) services as defined in section 386.754, RSMo by the General Assembly of Missouri.

(C) Control (including the terms "controlling," "controlled by," and "common control") means the possession, directly or indirectly, of the power to direct, or to cause the direction of the management or policies of an entity, whether such power is exercised through one (1) or more intermediary entities, or alone, or in conjunction with, or pursuant to an agreement with, one (1) or more other entities, whether such power is exercised through a majority or minority ownership or voting of securities, common directors, officers or stockholders, voting trusts, holding trusts, affiliated entities, contract or any other direct or indirect means. The commission shall presume that the beneficial ownership of ten percent (10%) or more of voting securities or partnership interest of an entity constitutes control for purposes of this rule. This provision, however, shall not be construed to prohibit a regulated heating company from rebutting the presumption that its ownership interest in an entity confers control.

(D) Corporate support means joint corporate oversight, governance, support systems and personnel, involving payroll, shareholder services, financial reporting, human resources, employee records, pension management, legal services, and research and development activities.

(E) Derivatives means a financial instrument, traded on or off an exchange, the price of which is directly dependent upon (i.e., derived from) the value of one or more underlying securities, equity indices, debt instruments, commodities, other derivative instruments or any agreed-upon pricing index or arrangement (e.g., the movement over time of the Consumer Price Index or freight rates). Derivatives involve the trading of rights or obligations based on the underlying product, but do not directly transfer property. They are used to hedge risk or to exchange a floating rate of return for a fixed rate of return.

(F) Fully distributed cost (FDC) means a methodology that examines all costs of an enterprise in relation to all the goods and services that are produced. FDC requires recognition of all costs incurred directly or indirectly used to produce a good or service. Costs are assigned either through a direct or allocated approach. Costs that cannot be directly assigned or indirectly allocated

(e.g., general and administrative) must also be included in the FDC calculation through a general allocation.

(G) Information means any data obtained by a heating company that is not obtainable by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(H) Preferential service means information or treatment or actions by the regulated heating company which places the affiliated entity at an unfair advantage over its competitors.

(I) Regulated heating company means every heating company as defined in section 386.020, RSMo, subject to commission regulation pursuant to Chapter 393, RSMo.

(J) Unfair advantage means an advantage that cannot be obtained by nonaffiliated entities or can only be obtained at a competitively prohibitive cost in either time or resources.

(K) Variance means an exemption granted by the commission from any applicable standard required pursuant to this rule.

#### (2) Standards.

(A) A regulated heating company shall not provide a financial advantage to an affiliated entity. For the purposes of this rule, a regulated heating company shall be deemed to provide a financial advantage to an affiliated entity if—

1. It compensates an affiliated entity for goods or services above the lesser of—

A. The fair market price; or

B. The fully distributed cost to the regulated heating company to provide the goods or services for itself; and

2. It transfers information, assets, goods or services of any kind to an affiliated entity below the greater of—

A. The fair market price; or

B. The fully distributed cost to the regulated heating company.

(B) Except as necessary to provide corporate support functions, the regulated heating company shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

(C) Specific customer information shall be made available to affiliated or unaffiliated entities only upon consent of the customer or as otherwise provided by law or commission rules or orders. General or aggregated customer information shall be made available to affiliated or unaffiliated entities upon similar terms and conditions. The regulated heating company may set reasonable charges for costs incurred in producing customer information. Customer information includes information provided to the regulated utility by affiliated or unaffiliated entities.

(D) The regulated heating company shall not participate in any affiliate transactions which are not in compliance with this rule except as otherwise provided in section (10) of this rule.

(E) If a customer requests information from the regulated heating company about goods or services provided by an affiliated entity, the regulated heating company may provide information about its affiliate but must inform the customer that regulated services are not tied to the use of an affiliate provider and that other service providers may be available. The regulated heating company may provide reference to other service providers or to commercial listings, but is not required to do so. The regulated heating company shall include in its annual Cost Allocation Manual (CAM), the criteria, guidelines, and procedures it will follow to be in compliance with this rule.

(F) Marketing materials, information or advertisements by an affiliate entity that share an exact or similar name, logo or trademark of the regulated utility shall clearly display or announce that the affiliate entity is not regulated by the Missouri Public Service Commission.

#### (4) Record Keeping Requirements.

(A) A regulated heating company shall maintain books, accounts and records separate from those of its affiliates.

(B) Each regulated heating company shall maintain the following information in a mutually agreed to electronic format (i.e., agreement between the staff, Office of the Public Counsel and the regulated heating company) regarding affiliate transactions on a calendar year basis and shall provide such information to the commission staff and the Office of the Public Counsel on, or before, March 15th of the succeeding year:

1. A full and complete list of all affiliated entities as defined by this rule;

2. A full and complete list of all goods and services provided to or received from affiliated entities;

3. A full and complete list of all contracts entered with affiliated entities;

4. A full and complete list of all affiliate transactions undertaken with affiliated entities without a written contract together with a brief explanation of why there was no contract;

5. The amount of all affiliate transactions by affiliated entity and account charged; and

6. The basis used (e.g., fair market price, FDC, etc.) to record each type of affiliate transaction.

(C) In addition, each regulated heating company shall maintain the following information regarding affiliate transactions on a calendar year basis:

1. Records identifying the basis used (e.g., fair market price, FDC, etc.) to record all affiliate transactions; and

2. Books of accounts and supporting records in sufficient detail to permit verification of compliance with this rule.

(9) The regulated heating company shall train and advise its personnel as to the requirements and provisions of this rule as appropriate to ensure compliance.

#### (10) Variances.

(A) A variance from the standards in this rule may be obtained by compliance with paragraph (10)(A)1. or (10)(A)2. The granting of a variance to one regulated heating company does not constitute a waiver respecting or otherwise affect the required compliance of any other regulated heating company to comply with the standards. The scope of a variance will be determined based on the facts and circumstances found in support of the application—

1. The regulated heating company shall request a variance upon written application in accordance with commission procedures set out in 4 CSR 240-2.060(11); or

2. A regulated heating company may engage in an affiliate transaction not in compliance with the standards set out in subsection (2)(A) of this rule, when to its best knowledge and belief, compliance with the standards would not be in the best interests of its regulated customers and it complies with the procedures required by subparagraphs (10)(A)2.A. and (10)(A)2.B. of this rule.

A. All reports and record retention requirements for each affiliate transaction must be complied with; and

B. Notice of the noncomplying affiliate transaction shall be filed with the secretary of the commission and the Office of the Public Counsel within ten (10) days of the occurrence of the noncomplying affiliate transaction. The notice shall provide a detailed explanation of why the affiliate transaction should be exempted from the requirements of subsection (2)(A), and shall provide a detailed explanation of how the affiliate transaction was in the best interests of the regulated customers. Within thirty (30) days of the notice of the noncomplying affiliate transaction, any party shall have the right to request a hearing regarding the noncomplying affiliate transaction. The commission may grant or deny the request for hearing at that time. If the commission denies a request for hearing, the denial shall not in any way prejudice a party's ability to challenge the affiliate transaction at the time of the annual CAM filing. At the time of the filing of the regulated heating company's annual CAM filing the regulated heating company shall provide to the secretary of the commission a listing of all noncomplying affiliate transactions which occurred during the period of the last filing and the current filing. Any affiliate

transaction submitted pursuant to this section shall remain interim, subject to disallowance, pending final commission determination on whether the noncomplying affiliate transaction resulted in the best interests of the regulated customers.

(11) Nothing contained in this rule and no action by the commission under this rule shall be construed to approve or exempt any activity or arrangement that would violate the antitrust laws of the state of Missouri or of the United States or to limit the rights of any person or entity under those laws.

**Title 5—DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION  
Division 80—Urban and Teacher Education  
Chapter 800—Teacher Certification and Professional  
Conduct and Investigations**

**ORDER OF RULEMAKING**

By the authority vested in the State Board of Education under sections 161.092, 168.011 and 168.081, RSMo 1994 and 168.021 and 168.071, RSMo Supp. 1999, the board adopts a rule as follows:

**5 CSR 80-800.290 Application for Substitute Certificate of  
License to Teach is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2143-2144). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 9—DEPARTMENT OF MENTAL HEALTH  
Division 30—Certification Standards  
Chapter 4—Mental Health Programs**

**ORDER OF RULEMAKING**

By the authority vested in the director of the Department of Mental Health under section 630.050, RSMo Supp. 1999, the director amends a rule as follows:

**9 CSR 30-4.030 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2215-2216). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department received several comments in support of the proposed amendment.

COMMENT: Regarding 9 CSR 40-4.030(2)(CC), four comments were received objecting to physician assistants being dropped as qualified providers of medication services.

RESPONSE: Community Psychiatric Rehabilitation (CPR) is a highly specialized service and treatment program designed to serve persons with severe and persistent mental illness. These are by definition persons who continue to have significant symptoms and impairment after receiving the usual general treatment available for their mental illnesses. Physician assistants are trained in a generalist primary care model. This does include some mental health training but not a sufficient amount or intensity to consider them specialist providers for treatment resistant populations. The pro-

fession of physician assistant has not developed any specialty certification for mental health or psychiatric care. While physician assistants training may be adequate for them to provide medication services for routine mental conditions commonly seen in primary practice settings, their training does not adequately prepare them for caring for persons who are severely and persistently mentally ill in highly specialized programs. The department disagrees with the comments and has not revised the amendment as requested.

COMMENT: One commenter recommended that psychiatric pharmacists as described in the proposed amendment be included in the definition of qualified mental health professional as defined in 9 CSR 30-4.030(2)(GG).

RESPONSE AND EXPLANATION OF CHANGE: We have reviewed the curriculum covered in the two (2)-year postgraduate mental health specialty training that persons qualifying for psychiatric pharmacists complete and have determined that it is as extensive as the training received by several other types of professionals currently considered as qualified mental health professionals and is adequate to competently provide services that are mandated to be done by a qualified mental health professional. The department agrees with this comment; therefore, psychiatric pharmacist has been included as a qualified mental health professional in the revised amendment.

**9 CSR 30-4.030 Certification Standards Definitions**

(2) As used in 9 CSR 30-4.031-9 CSR 30-4.047, unless the context clearly indicates otherwise, the following terms shall mean:

(GG) Mental health professional— any of the following:

1. A physician licensed under Missouri law to practice medicine or osteopathy and with training in mental health services or one (1) year of experience, under supervision, in treating problems related to mental illness or specialized training;
2. A psychiatrist, a physician licensed under Missouri law who has successfully completed a training program in psychiatry approved by the American Medical Association, the American Osteopathic Association or other training program identified as equivalent by the department;
3. A psychologist licensed under Missouri law to practice psychology with specialized training in mental health services;
4. A professional counselor licensed under Missouri law to practice counseling and with specialized training in mental health services;
5. A clinical social worker with a master's degree in social work from an accredited program and with specialized training in mental health services;
6. A psychiatric nurse, a registered professional nurse licensed under Chapter 335, RSMo with at least two (2) years of experience in a psychiatric setting or a master's degree in psychiatric nursing;
7. An individual possessing a master's or doctorate degree in counseling and guidance, rehabilitation counseling and guidance, rehabilitation counseling, vocational counseling, psychology, pastoral counseling or family therapy or related field who has successfully completed a practicum or has one (1) year of experience under the supervision of a mental health professional;
8. An occupational therapist certified by the American Occupational Therapy Certification Board, registered in Missouri, has a bachelor's degree and has completed a practicum in a psychiatric setting or has one (1) year of experience in a psychiatric setting, or has a master's degree and has completed either a practicum in a psychiatric setting or has one (1) year of experience in a psychiatric setting;
9. An advanced practice nurse as set forth in section 335.011, RSMo, a nurse who has had education beyond the basic nursing education and is certified by a nationally recognized professional organization as having a nursing specialty, or who meets criteria for advanced practice nurses established by the board of nursing; and
10. A psychiatric pharmacist as defined in 9 CSR 30-4.030;

**Title 9—DEPARTMENT OF MENTAL HEALTH  
Division 30—Certification Standards  
Chapter 4—Mental Health Programs**

**ORDER OF RULEMAKING**

By the authority vested in the director of the Department of Mental Health under section 630.050, RSMo Supp. 1999, the director amends a rule as follows:

9 CSR 30-4.034 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2216–2217). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department received several comments in support of the proposed amendment.

COMMENT: Regarding 9 CSR 30-4.034(1)(C) and 9 CSR 30-4.034(1)(H)2., three individuals commented that the proposed amendment allows for the substitution of a community support assistant for a community support worker. The recommendation was made to use community support assistants as adjuncts to the treatment team and process, and to allow community support assistants to assist with some aspects of community support functions such as transportation, accompanying consumers to appointments, assisting consumers with housing, medical assistance, vocational/recreational supports, assisting with certain activities of daily living. The commenters also recommended that community support workers' activities should include assessment and monitoring consumers' adjustment, monitoring consumers' participation in treatment, participation in treatment plan development/revision, maintaining contact with hospitalized consumers, teaching/coaching around certain activities of daily living, working with family members and educating family members. Additionally, the commenters recommended that community support assistants should not be assigned a caseload.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with these comments to the extent that community support assistants should not operate independently and must function under the supervision of a community support worker. The department feels that community support assistants could perform these activities with supervision. It was never the department's intent for a community support assistant to substitute for a community support worker. This amendment has been revised accordingly.

**9 CSR 30-4.034 Personnel and Staff Development**

(1) Only qualified professionals shall provide community psychiatric rehabilitation (CPR) services. Qualified professionals for each service shall include:

(C) For treatment planning, a team consisting of at least a physician, one (1) other mental health professional as defined in 9 CSR 30-4.030 and the client's community support worker;

(H) For community support—

1. A mental health professional or an individual with a bachelor's degree in social work, psychology, nursing or a related field, supervised by a psychologist, professional counselor, clinical social worker, psychiatric nurse or individual with an equivalent degree as defined in 9 CSR 30-4.030. Equivalent experience may be substituted on the basis of one (1) year of experience for each year of required educational training; or

2. A community support assistant with a high school diploma or equivalent and applicable training required by the department, under the direction of a community support worker, supervised by a qualified mental health professional as defined in 9 CSR 30-4.030; and

**Title 9—DEPARTMENT OF MENTAL HEALTH  
Division 30—Certification Standards  
Chapter 4—Mental Health Programs**

**ORDER OF RULEMAKING**

By the authority vested in the director of the Department of Mental Health under section 630.055, RSMo Supp. 1999, the director amends a rule as follows:

**9 CSR 30-4.035 Client Records of a Community Psychiatric Rehabilitation Program is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2217–2219). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department received several comments in support of the proposed amendment.

COMMENT: Regarding 9 CSR 30-4.035(12)(A)1. and 2., one person commented that session/group attendance logs should be removed from the rule amendment.

RESPONSE: Documentation of specific services rendered and the client's response to the services by including a weekly note in the clinical record is necessary for fiscal monitoring purposes. The department disagrees with this comment and has not revised the amendment as requested.

**Title 9—DEPARTMENT OF MENTAL HEALTH  
Division 30—Certification Standards  
Chapter 4—Mental Health Programs**

**ORDER OF RULEMAKING**

By the authority vested in the director of the Department of Mental Health under section 630.050, RSMo Supp. 1999, the director amends a rule as follows:

9 CSR 30-4.039 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2219–2220). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department received several comments in support of the proposed amendment.

COMMENT: Three individuals commented that the proposed amendment allows for the substitution of a community support assistant for a community support worker. The recommendation was made to use community support assistants as adjuncts to the treatment team and process, and to allow community support assistants to assist with some aspects of community support functions such as transportation, accompanying consumers to appointments, assisting consumers with housing, medical assistance, vocational/recreational supports, assisting with certain activities of daily living. The commenters also recommended that community support workers' activities should include assessment and monitoring consumers' adjustment, monitoring consumers' participation in treatment, participation in treatment plan development/revision, maintaining contact with hospitalized consumers, teaching/coaching around certain activities of daily living, working with family members and educating family members. Additionally, the commenters recommended that community sup-

port assistants should not be assigned a caseload.

RESPONSE: The department agrees with these comments to the extent that community support assistants should not operate independently and must function under the supervision of a community support worker. The department feels that community support assistants could perform these activities with supervision. It was never the department's intent for a community support assistant to substitute for a community support worker. Accordingly the department has added a new section (13) to 9 CSR 30-4.039 to clarify the role of the community support assistant.

#### 9 CSR 30-4.039 Service Provision

(13) The CPR provider shall utilize community support assistants as adjuncts to and assistants to the treatment team. Community support assistants may not be assigned an independent client caseload, and must provide services under the direction of the assigned community support worker.

### Title 9—DEPARTMENT OF MENTAL HEALTH Division 30—Certification Standards Chapter 4—Mental Health Programs

#### ORDER OF RULEMAKING

By the authority vested in the director of the Department of Mental Health under section 630.050, RSMo Supp. 1999, the director amends a rule as follows:

#### 9 CSR 30-4.042 Admission Criteria is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2220-2222). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

### Title 9—DEPARTMENT OF MENTAL HEALTH Division 30—Certification Standards Chapter 4—Mental Health Programs

#### ORDER OF RULEMAKING

By the authority vested in the director of the Department of Mental Health under section 630.050, RSMo Supp. 1999, the director amends a rule as follows:

#### 9 CSR 30-4.043 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2222-2224). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department received several comments in support of the proposed amendment.

COMMENT: Four comments were received objecting to physician assistants being dropped as a qualified provider of medication services in 9 CSR 30-4.043(2)(B).

RESPONSE: Community Psychiatric Rehabilitation (CPR) is a highly specialized service and treatment program designed to serve persons with severe and persistent mental illness. These are by definition persons who continue to have significant symptoms and impairment after receiving the usual general treatment available for their mental illnesses. Physician assistants are trained in a gener-

alist primary care model. This does include some mental health training but not a sufficient amount or intensity to consider them specialist providers for treatment resistant populations. The profession of physician assistant has not developed any specialty certification for mental health or psychiatric care. While physician assistants training may be adequate for them to provide medication services for routine mental conditions commonly seen in primary practice settings, their training does not adequately prepare them for caring for persons who are severely and persistently mentally ill in highly specialized programs. The department disagrees with the comments and has not revised the amendment as requested.

COMMENT: Three individuals commented that the proposed amendment allows for the substitution of a community support assistant for a community support worker. The recommendation was made to use community support assistants as adjuncts to the treatment team and process, and to allow community support assistants to assist with some aspects of community support functions such as transportation, accompanying consumers to appointments, assisting consumers with housing, medical assistance, vocational/recreational supports, assisting with certain activities of daily living. The commenters also recommended that community support workers' activities should include assessment and monitoring consumers adjustment, monitoring consumers participation in treatment, participation in treatment plan development/revision, maintaining contact with hospitalized consumers, teaching/coaching around certain activities of daily living, working with family members and educating family members. Additionally, the commenters recommended that community support assistants should not be assigned a caseload.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with these comments to the extent that community support assistants should not operate independently and must function under the supervision of a community support worker. The department feels that community support assistants could perform these activities with supervision. It was never the department's intent for a community support assistant to substitute for a community support worker. Accordingly the department has revised 9 CSR 30-4.043(2)(F) to clarify the role of community support assistants.

#### 9 CSR 30-4.043 Treatment Provided by Community Psychiatric Rehabilitation Programs

(2) The CPR provider shall provide the following community psychiatric rehabilitation services to eligible clients, as prescribed by individualized treatment plans:

(F) Community support, activities designed to ease an individual's immediate and continued adjustment to community living by coordinating delivery of mental health services with services provided by other practitioners and agencies, monitoring client progress in organized treatment programs, among other strategies. Community support assistants, as defined in 9 CSR 30-4.030 and 9 CSR 30-4.034, may provide community support services only under the direction of a community support worker. Key service functions include, but are not limited to:

1. Assessing and monitoring a client's adjustment to community living;
2. Monitoring client participation and progress in organized treatment programs to assure the planned provision of service according to the client's individual treatment plan;
3. Participating in the development or revision of a specific individualized treatment plan;
4. Providing individual assistance to clients in accessing needed mental health services including accompanying clients to appointments to address medical or other health needs;
5. Providing individual assistance to clients in accessing a variety of public services including financial and medical assistance and housing, including assistance on an emergency basis, and directly helping to meet needs for food, shelter, and clothing;

6. Assisting the client to access and utilize a variety of community agencies and resources to provide ongoing social, educational, vocational and recreational supports and activities;

7. Interceding on behalf of individual clients within the community-at-large to assist the client in achieving and maintaining their community adjustment;

8. Maintaining contact with clients who are hospitalized and participating in and facilitating discharge planning;

9. Training, coaching and supporting in daily living skills, including housekeeping, cooking, personal grooming, accessing transportation, keeping a budget, paying bills and maintaining an independent residence;

10. Assisting in creating personal support systems that include work with family members, legal guardians or significant others regarding the needs and abilities of an identified client;

11. Encouraging and promoting recovery efforts, consumer independence/self-care and responsibility; and

12. Providing support to families in areas such as treatment planning, dissemination of information, linking to services, and parent guidance;

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 10—Air Conservation Commission**  
**Chapter 5—Air Quality Standards and Air Pollution**  
**Control Rules Specific to the St. Louis Metropolitan**  
**Area**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 1999, the commission adopts a rule as follows:

10 CSR 10-5.295 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2001–2006). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The department received comments from the U.S. Environmental Protection Agency (EPA) and the Boeing Company. The comments focused mainly on typographical errors, regulatory overlap, and fiscal note corrections.

**COMMENT:** The EPA commented that the phrase “at least 30 years ago” in subsection (1)(D) should have some point of reference.

**RESPONSE:** Section (1) of the rule as proposed does not contain a subsection (D). The department believes EPA intended to reference subsection (2)(D). Subsection (2)(D) contains the reference EPA identifies. The 30 year time frame is intended to be a rolling time period. No point of reference is necessary. No change was made to the rule as a result of this comment.

**COMMENT:** The EPA commented that in section (3), General Provisions, several references are made to exempt solvents although exempt solvents are not defined anywhere in the rule. The EPA states that the rule should define exempt solvents.

**RESPONSE:** Rule 10 CSR 10-6.020 is referenced in the definition section of this rulemaking. Subsection (3)(V)9. of 10 CSR 10-6.020 does contain a list of volatile organic compounds that are exempted from being reported as volatile organic compounds (VOCs). These are the exempt solvents referenced in this rulemaking. Therefore, the department is not amending the language of the proposed rule as a result of this comment.

**COMMENT:** The EPA commented that the last phrase in paragraph (3)(B)3. should be revised to state as follows: provided that the owner or operator demonstrates, in accordance with subsection (5)(C), that the control system has a VOC reduction efficiency of 81 percent or greater.

**RESPONSE AND EXPLANATION OF CHANGE:** The department has amended the language of subsection (3)(B)3. to reflect the recommended language.

**COMMENT:** The EPA commented that the word when should be inserted between the words except and in at the end of the first sentence in paragraph (3)(G)3.

**RESPONSE AND EXPLANATION OF CHANGE:** The department has amended paragraph (3)(G)3. to reflect this comment.

**COMMENT:** The EPA commented that the first sentence in subsection (3)(I) should be revised to read as follows: The following activities are exempt from this section.

**RESPONSE AND EXPLANATION OF CHANGE:** The department has amended the language in subsection (3)(I) to reflect that suggested in the comment.

**COMMENT:** The EPA commented that subsection (3)(K) appears to contain a de minimis exemption, but it is unclear from the wording what is intended to be exempt. The EPA commented that this section should be revised to clarify the exemption.

**RESPONSE:** The department does not agree that the language in subsection (3)(K) is ambiguous. The language in subsection (3)(K) is consistent with EPA's Control Techniques Guidelines document model rule as well as aerospace regulations in other states. Therefore, the department is not amending the language of the proposed rule as a result of this comment.

**COMMENT:** The EPA commented that the department should change the second word “that” to “the” in paragraph (3)(K)1.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment and has made the recommended change.

**COMMENT:** The EPA commented that section (4) does not define how long the records should be kept. The EPA stated that the current maximum achievable control technology (MACT) standards required that records be kept for at least five years. The EPA recommended for consistency that all of the reasonably available control technology (RACT) rules read similar to the 10 CSR 10-5.520 rule: All reports and records must be kept on-site for at least five (5) years and made available to the department upon request.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment and has added the language from proposed rule 10 CSR 10-5.520 to new subsection (4)(C).

**COMMENT:** The EPA commented that subparagraph (4)(B)1.B. should be revised to read: Record each coating volume usage on a monthly basis.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees this comment and has amended the language of subparagraph (4)(B)1.B. to reflect the suggested language.

**COMMENT:** The EPA commented that subsection (5)(C) should be revised as follows: An owner or operator of an aerospace manufacture and/or rework operation electing to demonstrate compliance with this rule by use of control equipment meeting the requirements of paragraph (3)(B)3., shall demonstrate the required capture efficiency in accordance with EPA Methods 18, 25, and/or 25A in 40 CFR 60 Appendix A.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment and has amended the language of subsection (5)(C) to reflect the suggested language.

COMMENT: The Boeing Company commented that the regulatory overlap between the proposed rule and 10 CSR 10-5.330 needs to be removed as soon as possible.

RESPONSE: The department has submitted a request to begin working on the rule amendment necessary to address the regulatory overlap between these two rulemakings. The department will work to complete this rulemaking as soon as approval is granted. In the interim, the department will issue a policy statement to ensure that no enforcement action is taken on the overlapping requirements from 10 CSR 10-5.330. Therefore, no wording changes have been made to the proposed rule as a result of this comment.

COMMENT: The Boeing Company commented that the definition for chemical milling maskant is missing several words in the last sentence and should be corrected to make sense.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has amended the definition in subsection (2)(F) to read as it does in the federal regulation.

COMMENT: The Boeing Company commented that the topcoat and primer limits in (3)(A) have rounding errors in the metric equivalent levels.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has amended the appropriate emission limits to reflect those in the comment.

COMMENT: The Boeing Company commented that the explanation of costs in the private entity fiscal note is not correct and should be amended to state that costs are due to screening and testing of replacement coatings.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and is amending the private entity fiscal note to reflect the language in the comment.

## 10 CSR 10-5.295 Control of Emissions From Aerospace Manufacture and Rework Facilities

### (2) Definitions.

(F) Chemical milling maskants—A coating that is applied directly to aluminum components to protect surface areas when chemical milling the component with a Type I or Type II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Maskants that must be used with a combination of Type I or Type II etchants and any of the above types of maskants are also not included in this definition.

### (3) General Provisions.

(A) No person shall cause, permit, or allow the emissions of volatile organic compounds (VOC) from the coating of aerospace vehicles or components to exceed—

1. 2.9 pounds per gallon (350 grams per liter) of coating, excluding water and exempt solvents, delivered to a coating applicator that applies primers. For general aviation rework facilities, the VOC limitation shall be 4.5 pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies primers;

2. 3.5 pounds per gallon (420 grams per liter) of coating, excluding water and exempt solvents, delivered to a coating applicator that applies topcoats (including self-priming topcoats). For general aviation rework facilities, the VOC limit shall be 4.5 pounds per gallon (540 grams per liter) of coating, excluding water and exempt solvents, delivered to a coating applicator that applies topcoats (including self-priming topcoats);

3. The VOC content limits listed in Table I expressed in pounds per gallon of coating, excluding water and exempt solvents, delivered to a coating applicator that applies specialty coatings;

Table I: Specialty Coating VOC Limitations	Pounds per gallon	Grams per liter
Ablative Coating	5.0	600
Adhesion Promoter	7.4	890
Adhesive Bonding Primers:		
Cured at 250°F or below	7.1	850
Cured above 250°F	8.6	1030
Adhesives:		
Commercial Interior Adhesive	6.3	760
Cyanoacrylate Adhesive	8.5	1020
Fuel Tank Adhesive	5.2	620
Nonstructural Adhesive	3.0	360
Rocket Motor Bonding Adhesive	7.4	890
Rubber-Based Adhesive	7.1	850
Structural Autoclavable Adhesive	0.5	60
Structural Nonautoclavable Adhesive	7.1	850
Antichafe Coating	5.5	660
Bearing Coating	5.2	620
Caulking and Smoothing Compounds	7.1	850
Chemical Agent-Resistant Coating	4.6	550
Clear Coating	6.0	720
Commercial Exterior Aerodynamic Structure Primer	5.4	650
Compatible Substrate Primer	6.5	780
Corrosion Prevention Compound	5.9	710
Cryogenic Flexible Primer	5.4	645
Cryoprotective Coating	5.0	600
Dry Lubricative Material	7.3	880
Electric or Radiation-Effect Coating	6.7	800
Electrostatic Discharge and Electromagnetic Interference (EMI) Coating	6.7	800
Elevated Temperature Skydrol Resistant Commercial Primer	6.2	740
Epoxy Polyamide Topcoat	5.5	660
Fire-Resistant (interior) Coating	6.7	800
Flexible Primer	5.3	640
Flight-Test Coatings:		
Missile or Single Use Aircraft	3.5	420
All Others	7.0	840
Fuel-Tank Coating	6.0	720
High-Temperature Coating	7.1	850
Insulation Covering	6.2	740
Intermediate Release Coating	6.3	750
Lacquer	6.9	830
Maskant:		
Bonding Maskant	10.3	1230
Critical Use and Line Sealer Maskant	8.5	1020
Seal Coat Maskant	10.3	1230
Metallized Epoxy Coating	6.2	740
Mold Release	6.5	780
Optical Anti-Reflective Coating	6.3	750
Part Marking Coating	7.1	850
Pretreatment Coating	6.5	780
Rain Erosion-Resistant Coating	7.1	850
Rocket Motor Nozzle Coating	5.5	660
Scale Inhibitor	7.3	880
Screen Print Ink	7.0	840
Sealants:		
Extrudable/Rollable/Brushable Sealant	2.3	280
Sprayable Sealant	5.0	600
Silicone Insulation Material	7.1	850
Solid Film Lubricant	7.3	880
Specialized Function Coating	7.4	890
Temporary Protective Coating	2.7	320
Thermal Control Coating	6.7	800
Wet Fastener Installation Coating	5.6	675
Wing Coating	7.1	850

4. 5.2 pounds per gallon (620 grams per liter) of coating, excluding water and exempt solvents, delivered to a coating applicator that applies Type I chemical milling maskant; and

5. 1.3 pounds per gallon (150 grams per liter) of coating, excluding water and exempt solvents, delivered to a coating applicator that applies Type II chemical milling maskants.

(B) The emission limitations in paragraph (3)(A)1. of this rule shall be achieved by—

1. The application of low solvent coating technology where each and every coating meets the specified applicable limitation expressed in pounds of VOC per gallon of coating, excluding water and exempt solvents, stated in subsection (3)(A) of this rule;

2. The application of low solvent coating technology where the monthly volume-weighted average VOC content of each specified coating type meets the specified applicable limitation expressed in pounds of VOC per gallon of coating, excluding water and exempt solvents, stated in subsection (3)(A) of this rule; averaging is not allowed for specialty coatings, and averaging is not allowed between primers, topcoats (including self-priming topcoats), Type I milling maskants, and Type II milling maskants or any combination of the above coating categories; or

3. Control equipment, including but not limited to incineration, carbon adsorption and condensation, with a capture system approved by the director, provided that the owner or operator demonstrates, in accordance with subsection (5)(C), that the control system has a VOC reduction efficiency of eighty-one percent (81%) or greater.

(G) Each owner or operator of an aerospace manufacturing and/or rework operation shall clean all spray guns used in the application of primers, topcoats (including self-priming topcoats), and specialty coatings utilizing one or more of the following techniques:

1. Enclosed system. Spray guns shall be cleaned in an enclosed system that is closed at all times except when inserting or removing the spray gun. Cleaning shall consist of forcing cleaning solvent through the gun. If leaks in the system are found, repairs shall be made as soon as practicable, but no later than fifteen (15) days after the leak was found. If the leak is not repaired by the fifteenth day after detection, the cleaning solvent shall be removed and the enclosed cleaner shall be shut down until the leak is repaired or its use is permanently discontinued;

2. Nonatomized cleaning. Spray guns shall be cleaned by placing cleaning solvent in the pressure pot and forcing it through the gun with the atomizing cap in place. No atomizing air is to be used. The cleaning solvent from the spray gun shall be directed into a vat, drum, or other waste container that is closed when not in use;

3. Disassembled spray gun cleaning. Spray guns shall be cleaned by disassembling and cleaning the components by hand in a vat, which shall remain closed at all times except when in use. Alternatively, the components shall be soaked in a vat, which shall remain closed during the soaking period and when not inserting or removing components; and

4. Atomizing cleaning. Spray guns shall be cleaned by forcing the cleaning solvent through the gun and directing the resulting atomized spray into a waste container that is fitted with a device designed to capture the atomized cleaning solvent emissions.

(I) The following activities are exempt from this section:

1. Research and development;
2. Quality control;
3. Laboratory testing activities;
4. Chemical milling;
5. Metal finishing;
6. Electrodeposition except for the electrodeposition of paints;
7. Composites processing except for cleaning and coating of composite parts or components that become part of an aerospace vehicle or component as well as composite tooling that comes in contact with such composite parts or components prior to cure;
8. Electronic parts and assemblies except for cleaning and topcoating of completed assemblies;
9. Manufacture of aircraft transparencies;
10. Wastewater treatment operations;

11. Manufacturing and rework of parts and assemblies not critical to the vehicle's structural integrity or flight performance;

12. Regulated activities associated with space vehicles designed to travel beyond the limit of the earth's atmosphere, including but not limited to satellites, space stations, and the space shuttle;

13. Utilization of primers, topcoats, specialty coatings, cleaning solvents, chemical milling maskants, and strippers containing VOC at concentrations less than 0.1 percent for carcinogens or 1.0 percent for noncarcinogens;

14. Utilization of touchup, aerosol can, and Department of Defense classified coatings;

15. Maintenance and rework of antique aerospace vehicles and components; and

16. Rework of aircraft or aircraft components if the holder of the Federal Aviation Administration design approval, or the holder's licensee, is not actively manufacturing the aircraft or aircraft components.

(K) The following situations are exempt from the requirements of subsections (3)(D) and (3)(E):

1. Any situation that normally requires the use of an airbrush or an extension on the spray gun to properly reach limited access spaces;

2. The application of any specialty coating;

3. The application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and that cannot be applied by any of the application methods specified in subsection (3)(C) of this rule;

4. The application of coatings that normally have dried film thickness of less than 0.0013 centimeter (0.0005 in.) and that cannot be applied by any of the application methods specified in subsection (3)(C) of this rule;

5. The use of airbrush application methods for stenciling, lettering, and other identification markings;

6. The use of hand-held spray can application methods; and

7. Touch up and repair operations.

(4) Reporting and Record Keeping.

(B) Record Keeping Requirements.

1. Each owner or operator of an aerospace manufacture and/or rework operation that applies coatings listed in subsection (3)(A) of this rule shall—

A. Maintain a current list of coatings in use with category and VOC content as applied;

B. Record each coating volume usage on a monthly basis; and

C. Maintain records of monthly volume-weighted average VOC content for each coating type included in averaging for coating operations that achieve compliance through coating averaging under paragraph (3)(B)2. of this rule.

2. Each owner or operator of an aerospace manufacture and/or rework operation that uses cleaning solvents subject to this rule shall—

A. Maintain a list of materials with corresponding water contents for aqueous and semi-aqueous hand-wipe cleaning solvents;

B. Maintain a current list of cleaning solvents in use with their respective vapor pressure or, for blended solvents, VOC composite vapor pressure for all vapor pressure compliant hand-wipe cleaning solvents. This list shall include the monthly amount of each applicable solvent used; and

C. Maintain a current list of exempt hand-wipe cleaning processes for all cleaning solvents with a vapor pressure greater than forty-five (45) mmHg used in exempt hand-wipe cleaning operations. This list shall include the monthly amount of each applicable solvent used.

(C) All records must be kept on-site for a period of five (5) years and made available to the department upon request.

(5) Test Methods.

(C) An owner or operator of an aerospace manufacture and/or rework operation electing to demonstrate compliance with this rule by use of control equipment meeting the requirements of paragraph (3)(B)3., shall demonstrate the required capture efficiency in accordance with EPA methods 18, 25, and/or 25A in 40 CFR 60, Appendix A.

**REVISED FISCAL NOTE  
PRIVATE ENTITY COST****I. RULE NUMBER**Title: 10 – Department of Natural ResourcesDivision: 10 - Air Conservation CommissionChapter: 5 – Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan AreaType of Rulemaking: Proposed RuleRule Number and Name: 10 CSR 10-5.295 – Control of Emissions from Aerospace Manufacture and Rework Facilities**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the Proposed Rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
3	Aerospace Manufacture and Rework Operations	\$7,500*

\*This aggregate cost is estimated assuming that the life of the rule is 10 years.

**III. WORKSHEET**

The estimated \$750 annual cost was supplied by the Boeing Corporation for additional compliance costs incurred due to this rule. Boeing is meeting the requirements of this regulation because it has implemented the requirements of the Aerospace maximum available control technology. The additional compliance cost associated with this rulemaking are due to screening and testing of replacement coatings associated with manufacturing work brought from ozone attainment locations in other states.

**IV. ASSUMPTIONS**

1. The department assumed that there are three facilities that meet the applicability requirements of this rule.
2. The department assumed that two of these facilities will take an operating permit limitation to be below the requirements of this rule thereby not incurring cost.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 10—Air Conservation Commission**  
**Chapter 5—Air Quality Standards and Air Pollution**  
**Control Rules Specific to the St. Louis Metropolitan**  
**Area**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 1999, the commission adopts a rule as follows:

10 CSR 10-5.500 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2007-2011). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The department received the following comments. The department's response follows each comment. Most of the comments received generally supported the proposed rule, but stressed the need for clarification of various applicability and technical issues.

**COMMENT:** U.S. Environmental Protection Agency (EPA) commented the rule never defines what is meant by tank cleaning. Thus, it is unclear as to when the requirement to install the control device is triggered before the March 15, 2004 date. EPA commented the rule should be clarified to state what is meant by tank cleaning. Also, the record keeping requirements in section (4) should include records of tank cleaning to document the date when the control devices became required.

**RESPONSE AND EXPLANATION OF CHANGE:** The department maintains the rule language is consistent with rule guidance developed by EPA. The department believes the definition of tank cleaning is generally understood. Clarifications, if necessary, will be handled on a case-by-case basis. Subsection (4)(E) has been changed to include a tank cleaning record keeping requirement.

**COMMENT:** EPA commented that records should be kept on site for a period of at least five years for consistency with other reasonably available control technology (RACT) rules and with current maximum achievable control technology (MACT) standards requirements.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees consistency is a primary objective. Section (4) has been changed accordingly.

**COMMENT:** The Regulatory Environmental Group for Missouri (REGFORM), Solutia Incorporated, and Ameren Services commented the term volatile organic liquid is not defined in either the proposed rule or in 10 CSR 10-6.020. The commenters recommended the department include a definition for volatile organic liquid in the rule to clarify what sources are affected by this rule.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees. A definition for volatile organic liquid has been added to section (2).

**COMMENT:** REGFORM, Solutia Incorporated, and Ameren Services commented the wording in Section (1)(B)1. should read maximum true vapor pressure, not maximum true pressure.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees. Paragraph (1)(B)1. has been changed accordingly.

**COMMENT:** Anheuser-Busch Companies and REGFORM commented that a definition of beverage alcohol should be added to the rule. The following language was suggested—beverage alcohol is defined as consumable products and their process intermediates and byproducts, consisting of ethanol or mixtures of ethanol and non-volatile organic liquids.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees. A definition for beverage alcohol has been added to section (2).

**COMMENT:** The Missouri Oil Council, REGFORM, and Ameren Services commented the applicability section should be amended to clarify that facilities which store or transfer volatile petroleum liquids exclusively are exempt from the rule's provisions. The commenters suggested the rule should explicitly exempt the storage and transfer of volatile petroleum liquids.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees the comment is consistent with the intent of the rule. Subsection (1)(B) has been changed by adding paragraph (1)(B)6. In addition, paragraph (1)(B)7. was added to exempt vessels used to store volatile organic liquids that are subject to or exempt from the requirements of 40 CFR Parts 60, 61 or 63.

**COMMENT:** REGFORM and Ameren Services commented that the rule references a maximum true vapor pressure of 0.5 pounds per square inch, but does not specify the temperature to be used in determining rule applicability. The commenters recommended that this be corrected.

**RESPONSE:** The department disagrees. Paragraph (4)(H)2. discusses the use of available data on storage temperature to determine the maximum true vapor pressure. The department maintains the rule language is consistent with federal guidance. Therefore, no changes were made to the rule language.

**COMMENT:** Ameren Services commented paragraph (1)(B)1. seems to confuse the issue of applicability. Subsection (1)(B) states the rule applicability. Paragraph (1)(B)1. restates that sources that do not meet the applicability are exempt. Ameren commented the section is very confusing to the reader as written. Ameren suggested deletion of subsection (1)(B) item 1 be considered.

**RESPONSE:** The department disagrees. Paragraph (1)(B)1. is intended to explicitly exempt liquids with a maximum true vapor pressure of less than one-half (0.5) psia. Therefore, no changes were made to the rule language.

**10 CSR 10-5.500 Control of Emissions From Volatile Organic Liquid Storage**

**(1) Applicability.**

(B) The provisions of this rule shall apply to all storage containers of volatile organic liquid (VOL) with a maximum true vapor pressure of one-half pound per square inch (0.5 psia) or greater in any stationary tank, reservoir or other container of forty thousand (40,000) gallon capacity or greater, except to vessels as follows:

1. Vessels with a capacity greater than or equal to forty thousand (40,000) gallons storing a liquid with a maximum true vapor pressure of less than one-half (0.5) psia;
2. Vessels permanently attached to mobile vehicles such as trucks, rail cars, barges or ships;
3. Vessels used to store beverage alcohol;
4. Pressure vessels designed to operate in excess of twenty-nine and four-tenths (29.4) psia and without emissions to the atmosphere;
5. Vessels of coke oven by-product plants;
6. Vessels used only to store or transfer petroleum liquids and that are subject to the requirements of 10 CSR 10-5.220; or

7. Vessels used to store volatile organic liquids that are subject to or exempt from the requirements of 40 CFR Parts 60, 61 or 63.

(2) Definitions.

(A) Beverage alcohol—Consumable products and their process intermediates and by-products, consisting of ethanol or mixtures of ethanol and non-volatile organic liquids.

(B) Liquid-mounted seal—A foam- or liquid-filled seal mounted in contact with the liquid between the wall of the storage vessel and the floating roof continuously around the circumference of the tank.

(C) Mechanical shoe seal—A metal sheet held vertically against the wall of the storage vessel by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(D) Volatile organic liquid—Any substance which is a liquid at storage conditions and which contains one or more volatile organic compounds as defined in 10 CSR 10-6.020.

(E) Definitions of certain terms specified in this rule, other than those specified in this rule section, may be found in 10 CSR 10-6.020.

(4) Reporting and Record Keeping. The owner or operator shall maintain all records required by this rule section, except for the records required by subsection (4)(F) of this rule, on-site for at least five (5) years. The records required by subsection (4)(F) of this rule shall be kept on-site for the life of the source. The records required by this rule shall be made available to the department immediately upon request.

(E) The owner or operator shall maintain records of tank cleaning operations to document the date when control devices are required.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 10—Air Conservation Commission**  
**Chapter 5—Air Quality Standards and Air Pollution**  
**Control Rules Specific to the St. Louis Metropolitan**  
**Area**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 1999, the commission adopts a rule as follows:

10 CSR 10-5.510 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2012-2019). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The department received comment from eleven entities. Comments were received from the U.S. Environmental Protection Agency (EPA), Advanced Environmental Associates representing Doe Run Inc., Ball Foster Glass Container Company, Anheuser-Busch Companies, Daimler Chrysler Corporation, Ameren, the Regulatory Environmental Group for Missouri (REGFORM), the Metropolitan St. Louis Sewer District, the St. Louis County Department of Health, Associated Industries of Missouri and the St. Louis Regional Commerce and Growth Association. The comments as well as the department's responses are listed below.

**COMMENT:** The EPA commented the exemption in paragraph (1)(C)9. refers to actual annual nitrogen oxide (NO<sub>x</sub>) emissions. This proposed language is inconsistent with applicable guidance which requires that applicability levels be based on potential to emit. If the department keeps an exemption based on actual emissions, the rule must require sources claiming the exemption to keep records sufficient to demonstrate that actual emissions are less than the applicability level. In addition, any source emitting greater than 100 tons per year based on potential to emit, which exceeds the actual emissions level of 30 tons per year must be subject to the NO<sub>x</sub> reasonably available control technology (RACT) rule, even if its emissions subsequently go below the applicability level. Also, the rule would need to provide a period of time after a source becomes subject to NO<sub>x</sub> RACT when it must submit a NO<sub>x</sub> RACT study so the state can establish a NO<sub>x</sub> RACT limit.

**RESPONSE AND EXPLANATION OF CHANGE:** The department believes that this exemption is necessary for units that are not large emitters but have high potential emissions. These units are not cost effective to control. However, any unit that emits greater than 30 tons per year of NO<sub>x</sub> that was previously exempt under paragraph (1)(C)9. must comply with the requirements of this rule and will not be considered exempt from the rule due to this paragraph at any time in the future. The department has added language to paragraph (1)(C)9. to clarify the exemption. The department agrees that a compliance date is necessary for units that are not initially required to implement RACT. A compliance date has been added to paragraph (1)(C)9.

**COMMENT:** The EPA commented the narrative accompanying submission of the rule should provide a rationale for the exemptions in subsection (1)(C) showing that the exemptions would be for sources with less than major emissions levels.

**RESPONSE:** The department will submit a narrative justifying the exemptions when the department submits the rule to the EPA for inclusion in the State Implementation Plan (SIP). No changes have been made to the proposed rule as a result of this comment.

**COMMENT:** The EPA commented subsection (1)(D) which provides that units experiencing malfunction or other specified events under 10 CSR 10-6.050 must comply with this rule is a generic provision and inclusion make the rule unnecessarily confusing. The provisions of subsection (1)(D) should be omitted or removed from the applicability section.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees subsection (1)(D) should not be included in the applicability of the rule. This rule language has been moved to new subsection (3)(I).

**COMMENT:** The EPA commented the portion of section (3) which contains specific NO<sub>x</sub> limits should include a statement that, for sources subject to the RACT rule and the Phase II acid rain rule compliance with the Phase II acid rain limits will meet the requirements of the NO<sub>x</sub> RACT rule and the NO<sub>x</sub> RACT requirements of this rule will not apply to such sources.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment. Installations that meet acid rain requirements will be controlling their NO<sub>x</sub> emissions at least to the level RACT. However, the department believes an exemption for Phase II acid rain units should be listed under the exemptions in subsection (1)(B). The department has added an exemption for Phase II acid rain units in new paragraph (1)(C)10.

**COMMENT:** The EPA commented that section (3) which specifies the emission requirements and limitations, and subsection (4)(A) which specifies the reporting of information when various compliance mechanisms are used, should reference the test methods specified in section (5) to improve the clarity of the rule.

**RESPONSE AND EXPLANATION OF CHANGE:** The department disagrees with the first portion of this comment. The language in section (5) of this rule directly references the subsections

in section (3) for which units must show compliance. No additional language is necessary. The department does agree subsection (4)(A) should reference the test methods in section (5) for clarity. Language has been added to subsection (4)(A) to reference the test methods in section (5).

COMMENT: The EPA commented section (3)(G) of proposed rule 10 CSR 10-5.520 Control of VOC Emissions from Existing Major Sources defines a detailed procedure for calculating total and incremental cost effectiveness, along with a ranking system for selecting the best, most cost effective control technology. The rule references the EPA's control cost manual. Similar language for determining total and incremental cost effectiveness and the reference to the control cost manual should be included in this rule.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. Proposed rule 10 CSR 10-5.520 includes a detailed procedure for calculating total and incremental cost effectiveness and ranking the best, most cost effective control technology. The department believes that the procedure for determining NO<sub>x</sub> RACT should be identical to the procedure for determining VOC RACT. Use of EPA's control cost manual should also be required so that RACT studies will be consistent. The department believes additional detail of what should be included in the RACT studies will allow sources to develop complete NO<sub>x</sub> RACT studies. The department has deleted paragraph (3)(F)2. in its entirety and replaced it with new paragraphs (3)(F)2. and (3)(F)3. which include language similar to sections (3)(F) and (3)(G) of proposed rule 10 CSR 10-5.520.

COMMENT: The EPA commented subsection (4)(B) does not define how long the records should be kept. Current maximum achievable control technology (MACT) standards require that records be kept for at least five years. The EPA recommends that the amount of time records must be kept be identical for all RACT rules and read similar to the language in proposed rule 10 CSR 10-5.520.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. Five years is consistent with record keeping requirements under Title V. New paragraph (4)(B)3. has been added to require records be kept for five years.

COMMENT: The EPA commented subsection (5)(A) states that stack tests must be completed every three years although sources must also submit annual reports showing monthly fuel usage and heat input. Unless there is some parameter monitoring requirement to tie the operating parameters to the emissions data from the stack test, sources would only be required to show compliance with RACT emission limits once every three years. Since sources subject to this rule would generally be subject to Title V, the department may wish to specify periodic monitoring requirements in this rule which would also satisfy the Title V requirements. The EPA does not require that RACT rules specify periodic monitoring.

RESPONSE: The department disagrees with this comment. Since Title V will require periodic monitoring, the department does not believe more frequent stack testing should be required in this rule. The stack tests will be used to determine emission rates. These rates are adequate to use with other parameters to verify that emission limits are being met. Additionally, the stack testing requirement is consistent with RACT requirements in other states. No change was made to this rule as a result of this comment.

COMMENT: The EPA commented subsection (5)(B) allows compliance demonstrations by alternate means such as continuous emissions monitoring, periodic emissions monitoring, or an equivalent approved by the department. While it is unlikely that sources would opt to demonstrate compliance on a continuous basis, the rule should include a provision for source specific EPA approval of alternate compliance mechanisms.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. In order for the rule to be approved by the EPA and put in the SIP, the rule must contain adequate measures to ensure that compliance is determined using a consistent protocol. Language has been added to subsection (5)(B) to require EPA approval of alternate compliance mechanisms.

COMMENT: The EPA commented for RACT requirements to be established under subsection (3)(F), the rule should be revised to require that RACT studies must be submitted by July 1, 2000. This requirement would help ensure that RACT requirements are established as expeditiously as practicable for those sources. To ensure expeditious implementation of the RACT requirements, the EPA expects that the state will submit specific RACT requirements for these sources to the EPA no later than January 1, 2001.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment. To ensure that NO<sub>x</sub> RACT requirements are established expeditiously, the department has changed the submittal date for the NO<sub>x</sub> RACT studies from January 1, 2001 to July 1, 2000. The compliance date for implementation of RACT remains May 1, 2002. If the department receives NO<sub>x</sub> RACT studies for specific sources by July 1, 2000, the department will submit specific RACT requirements for these sources to the EPA no later than January 1, 2001.

COMMENT: The EPA commented subsection (1)(B) states that the compliance date for all subject sources is May 1, 2002. If adopted, the state must demonstrate that this date is as expeditious as practicable in the narrative accompanying the SIP revision.

RESPONSE: The department agrees with this comment and will submit documentation with the SIP revision demonstrating NO<sub>x</sub> RACT controls will be implemented as expeditiously as practicable. The documentation will be submitted with the SIP revision no later than November 15, 1999. No change was made to the rule as a result of this comment.

COMMENT: The EPA commented the narrative submitted with the rule should list the sources in the nonattainment area known to be subject to this rule and provide negative declaration that there are no other known major sources of NO<sub>x</sub> in the nonattainment area which are not subject to this rule.

RESPONSE: The department agrees with this comment. The department will submit a negative declaration. The negative declaration will be submitted with the SIP revision no later than November 15, 1999. No change was made to the rule as a result of this comment.

COMMENT: The EPA commented the narrative submitted with the rule should include an analysis showing that the sources subject to subsection (3)(F) constitute a de minimis emission level compared to the total inventory of nonutility sources required to have NO<sub>x</sub> RACT. The demonstration is to be submitted with the November 15, 1999 SIP submittal.

RESPONSE: The department agrees with this comment. The department will submit an analysis showing the sources subject to subsection (3)(F) constitute a de minimis emission level compared to the total inventory of nonutility sources required to have NO<sub>x</sub> RACT. This analysis will be submitted with the SIP revision no later than November 15, 1999. No change was made to the rule as a result of this comment.

COMMENT: The Advance Environmental Associates representing Doe Run Inc. commented the Doe Run installation at Herculaneum should not be impacted by this proposed regulation. Advance Environmental Associates completed testing of NO<sub>x</sub> emissions from two blast furnaces operated at the Doe Run installation. The testing indicates that the actual emissions and potential emissions from these sources are not as great as was estimated on their annual Emissions Inventory Questionnaires. The test-

ing indicates that a much lower emission factor for NO<sub>x</sub> should be used.

**RESPONSE:** The department will evaluate the testing data submitted by Advance Environmental Associates on behalf of Doe Run Inc. The department will determine if the data is accurate and will determine if the rule applies to this installation. No change was made to the rule as a result this comment.

**COMMENT:** The Anheuser-Busch Companies and REGFORM commented under section (3) an emissions limit of 0.5 pounds of NO<sub>x</sub> per million British thermal unit heat input should be identified for cyclone boilers firing gaseous fuels only. This limit had previously been omitted when it was believed that none of these boilers operated in the St. Louis ozone nonattainment area.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment and has inserted the recommended NO<sub>x</sub> emissions limit in Table 1 of subsection (3)(A).

**COMMENT:** The Anheuser-Busch Companies and REGFORM commented given the magnitude of a project required to comply with this rule including a retrofit of existing units or construction of new units, the compliance date of May 1, 2002 could be too early. A phased approach should be included in the rule similar to the provisions of a New Jersey regulation (included with the comment letter). The provisions would allow for additional time if appropriate demonstrations can be made.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment. While the May 1, 2002 compliance date is reasonable for many affected units, other units that will comply through replacement of the entire unit may need additional time to comply. Replacement of entire units typically will result in much lower emission rates that can be achieved by retrofitting a unit with control equipment. However, the department believes significant environmental improvement must be demonstrated if additional time for compliance is allowed. The department has added new language to subsection (1)(B) to allow for extensions of the compliance date where a significant air quality benefit can be demonstrated.

**COMMENT:** The Daimler Chrysler Corporation commented that it supports the proposed limit of 0.2 pounds of NO<sub>x</sub> per mmBtu for any gaseous fuel fired boiler with a heat input of 100 mmBtu per hour or greater.

**RESPONSE:** The department agrees with this comment. No change was made to the rule as a result of this comment.

**COMMENT:** Ameren and REGFORM commented the definition of emergency standby boiler is too restrictive as proposed and does not capture all of the intended uses of these boilers. Ameren recommends the definition be changed to a boiler operated during times of loss of primary power at the installation that is beyond the control of the owner or operator of the installation, during routine maintenance, to provide steam for building heat or to protect essential equipment.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment. Emergency standby boilers can be used at times other than loss of primary power. In order for the boiler to remain exempt from the provisions of the rule, it must still meet the hours of operation limit in paragraph (1)(C)4. The department has changed the definition of emergency standby boiler in subsection (2)(C).

**COMMENT:** Ameren and REGFORM commented that under subsection (3)(E) the word similar should be removed because the meaning is unclear and could add some ambiguity to the rule.

**RESPONSE:** The department disagrees with this comment. The intent of the averaging provisions is to allow averaging between boilers, between turbines, between internal combustion engines or between other similar sources. For example, a boiler can be averaged with another boiler but not with a cement kiln. Different

types of emission sources will have significantly different emissions limitations due to the types of controls that are feasible. Additionally, compliance methods may vary greatly between different units. No change was made to the rule as result of this comment.

**COMMENT:** Ameren and REGFORM commented that under paragraph (3)(E)1. the second equation should be removed because it appears unnecessary.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment. The first equation is the only equation necessary to determine compliance with the averaging provisions. The second equation would only be useful if the averaging units have the same emission limitations. The second equation has been removed from the rule.

**COMMENT:** Ameren and REGFORM commented paragraph (3)(E)4. should be moved to section (4). The paragraph defines the reporting requirements for an averaging plan and should be included under the reporting and record keeping section.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment. Paragraph (3)(E)4. defines reporting requirements for units that are averaging emissions. These reporting requirements should be moved under subsection (4)(A). The department has deleted paragraph (3)(E)4. and added the same language to paragraph (4)(A)2.

**COMMENT:** Ameren commented reference methods 2F, 2G and 2H located in 40 CFR Part 60 Appendix A which are used to determine the exit velocity of stack gases should be added to paragraph (5)(A)2.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment and has added these reference methods to paragraph (5)(A)2.

**COMMENT:** Ameren commented that language should be added to subsection (5)(B) to allow the use of CEMS.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment. Language has been added to subsection (5)(B) to allow the use of CEMS.

**COMMENT:** REGFORM commented the exemption in subsection (1)(C) for units which emit less than 30 tons per year of NO<sub>x</sub> should be retained. This exemption level is based on a back-calculation of emissions from boilers of less than 50 mmBtu/hour of heat input. These boilers are of sufficiently small size that they should be exempted from this rule.

**RESPONSE:** The department agrees that the 30 ton per year exemption is necessary to avoid having very small sources install control equipment that is not cost effective. However, the department has added language to paragraph (1)(C)9. to clarify that if a unit exceeds the 30 ton per year exemption, the unit will be subject to the requirements of the rule and cannot be exempted from the rule thereafter. No change was made to the rule as a result of this comment.

**COMMENT:** The Metropolitan St. Louis Sewer District commented internal combustion engines with over 500 horsepower and maximum heat input capacity of 20 mmBtu per hour are specifically identified in the rule. However, the rule could be interpreted to require RACT studies for internal combustion engines with a maximum rated heat input capacity less than 20 mmBtu per hour. The Metropolitan St. Louis Sewer District recommends that paragraph (1)(C)3. be amended to include internal combustion engines with a rated maximum heat input capacity of less than 20 mmBtu as exempt from the provisions of this rule. If these units are not specifically exempt from this rule, then only annual tune-ups should be required.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment. The intent of subsection (3)(D) is to require emission limits for any internal combustion engine with a maximum heat input capacity greater than 20 mmBtu per hour and that have the horsepower ratings specified in this subsection. However, the addition of an exemption under paragraph (1)(C)2. will help clarify the rule. The department has added language to paragraph (1)(C)2. to exempt internal combustion engines with a maximum heat input capacity greater than 20 mmBtu per hour.

**COMMENT:** The Metropolitan St. Louis Sewer District commented sewage sludge incinerators should be specifically exempted from this rule. Alternatively, for combustion sources not specifically identified in the rule, such as sludge incinerators, having a maximum rated heat input capacity of less than 50 mmBtu per hour be exempt. Incinerators with a maximum rated heat input capacity between 50 and 100 mmBtu per hour should be required to perform annual adjustments or tune-ups rather than RACT studies.

**RESPONSE AND EXPLANATION OF CHANGE:** The department does not agree that sewage sludge incinerators should be exempted from this rule. The Metropolitan St. Louis Sewer District's installation does emit a significant quantity of NO<sub>x</sub> on an annual basis. However, the department has not been able to identify NO<sub>x</sub> emission limitations for incinerators. Therefore, the department believes that incinerators with maximum rated heat input capacity less than 50 mmBtu per hour should be exempt from the rule. An exemption has been added under new paragraph (1)(C)11. Incinerators with a maximum rated heat input capacity equal to or greater than 50 mmBtu per hour but less than 100 mmBtu per hour shall perform annual tune-ups. Language has been added to subsection (3)(B) for these units. Incinerators with a maximum heat input capacity equal to or greater than 100 mmBtu shall be required to complete a RACT study as set forth in subsection (3)(F). These provisions are consistent with the intent of the NO<sub>x</sub> RACT rule.

**COMMENT:** The Metropolitan St. Louis Sewer District commented the deadline for implementation of RACT studies should be based on at least 16 months after a final RACT determination is made or approved by the department.

**RESPONSE:** The department has committed to submit final NO<sub>x</sub> RACT emissions limitations for units subject to subsection (3)(F) to the EPA no later than January 1, 2001. The units will have NO<sub>x</sub> emissions limits no later than this date. With a final compliance date of May 1, 2002, as established in (3)(F)3. affected units will have a minimum of 16 months to implement the final NO<sub>x</sub> RACT determinations. No change was made to the rule as a result of this comment.

**COMMENT:** The Metropolitan St. Louis Sewer District commented for RACT studies, the department should identify a dollar per ton removed as an amount which will be considered reasonable. Failure to do so will result in inconsistent RACT determinations and possibly delay final RACT determinations. The department should use \$2000 per ton of NO<sub>x</sub> removed as identified in EPA's NO<sub>x</sub> SIP call.

**RESPONSE:** The department disagrees that a specific dollar per ton value should be identified as a reasonable cost figure. However, as a result of a previous comment the department has revised the requirements for NO<sub>x</sub> RACT studies to include more specific requirements and EPA's control cost manual. This should result in consistent NO<sub>x</sub> RACT studies and determinations. No change was made to the rule as a result of this comment.

**COMMENT:** The St. Louis County Department of Health commented that this rule is needed for major sources of NO<sub>x</sub> in the St. Louis ozone nonattainment area and they support the proposed rule.

**RESPONSE:** The department agrees this rule is necessary for major sources of NO<sub>x</sub>. No changes were made to the rule as a result of this comment.

**COMMENT:** The Ball-Foster Glass Container Company commented specific NO<sub>x</sub> emission limitations should be included in the rule for glass melting furnaces. New Jersey has NO<sub>x</sub> RACT requirements for these units and similar requirements should be included in Missouri's rule. Ball-Foster believes that a NO<sub>x</sub> RACT limit of 5.5 pounds of NO<sub>x</sub> per tons of glass pulled is an appropriate limit for regenerative container glass melting furnaces. Associated emissions testing and record keeping should also be included in the rule. The annual compliance demonstration should be reduced to once every five years for those emissions units demonstrating NO<sub>x</sub> emissions levels at fifty percent or less of the NO<sub>x</sub> RACT emission limits.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with the first part of this comment. NO<sub>x</sub> RACT for glass melting furnaces has been identified in several state rules. Hence, these units should not be required to complete NO<sub>x</sub> RACT studies. Rather a specific emission limit should be established in the rule. The department has added new subsection (3)(E) which establishes a NO<sub>x</sub> emissions limit for glass melting furnaces. Additional references to this new subsection for emissions averaging, record keeping and reporting have been added to the rule. The department does not believe less frequent compliance testing is appropriate. The compliance demonstration is necessary to ensure that emission limits are being met. The private entity fiscal note has been revised to include this installation.

**COMMENT:** River Cement Company commented that a NO<sub>x</sub> RACT requirement for cement kilns should be included in the NO<sub>x</sub> RACT rule. NO<sub>x</sub> RACT for cement kilns should be good combustion practices. River Cement Company has provided a review of the EPA's BACT/LAER/RACT Clearinghouse for NO<sub>x</sub> controls which identifies good combustion practices as an acceptable control technology.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment. NO<sub>x</sub> RACT for cement kilns has been identified in several state rules. EPA's database also identifies good combustion practices as reasonable control for cement kilns. The department has added new subsection (3)(F) to establish good combustion practices as RACT for cement kilns. Cement kilns will not need to comply with the case-by-case NO<sub>x</sub> RACT studies identified in the rule. Additional references to this new subsection for emissions averaging, record keeping and reporting have been added to the rule. The private entity fiscal note has been revised to include this installation.

**COMMENT:** The Associated Industries of Missouri commented their support of the NO<sub>x</sub> RACT rule.

**RESPONSE:** The department agrees with this comment. No change was made to the rule as a result of this comment.

**COMMENT:** The St. Louis Regional Commerce and Growth Association commented their support of the NO<sub>x</sub> RACT rule.

**RESPONSE:** The department agrees with this comment. No change was made to the rule as a result of this comment.

## 10 CSR 10-5.510 Control of Emissions of Nitrogen Oxides

(1) Applicability.

(B) Installations affected by this rule shall be in compliance no later than May 1, 2002. The director may grant an extension of the compliance deadline if the affected installation submits an alternative compliance plan no later than January 1, 2001. The alternative compliance plan shall include the following items:

1. For each affected unit, a detailed analysis of the air quality benefit that will occur if the compliance date is extended;
2. For each affected unit, a detailed explanation of the reasons why the owner or operator believes that compliance with the applicable NO<sub>x</sub> emissions limit by May 1, 2002 is impractical;
3. Information sufficient to identify each affected unit;
4. A proposed schedule setting dates by which the owner or operator will complete the following milestones for each affected unit:

- A. Applications for all necessary permits;
- B. Contracts for the implementation of new units or control equipment;
- C. Construction and installation of new units or control equipment; and
- D. Compliance with the applicable NO<sub>x</sub> emissions limitation established in this rule; and

5. Any other information the director requests.

(C) Exemptions. The requirements of this rule shall not apply to the following emission units:

1. Any boiler having a maximum heat input of less than fifty (50) million British thermal units (mmBtu) per hour;
2. Any stationary internal combustion engine having a rated energy output capacity of less than five hundred (500) horsepower or a maximum heat input capacity of twenty (20) mmBtu per hour or less;
3. Any stationary combustion turbine having a rated maximum heat input capacity of less than twenty (20) mmBtu per hour;
4. Any emergency standby boiler, stationary internal combustion engine, stationary combustion turbine, start up unit, or black start unit which operates less than seven hundred and fifty (750) hours annually and less than four hundred (400) hours during ozone season;
5. Any research and development emissions unit;
6. Any jet engine test cell;
7. Any air pollution control device;
8. Any emission unit which is required to meet a more stringent state or federal NO<sub>x</sub> emissions limitation;
9. Any unit that would otherwise be required to comply with this rule with actual annual NO<sub>x</sub> emissions of thirty (30) tons per year or less. This exemption shall cease to apply to a unit if the unit ever exceeds thirty (30) tons per year of actual NO<sub>x</sub> emissions for any calendar year. Any unit that becomes affected by this rule due to failure to maintain this exemption after January 1, 2000 shall immediately notify the department in writing that the rule applies. The unit shall be in compliance with the applicable provisions of this rule within twenty-four (24) months after notifying the department or May 1, 2002, whichever is later;
10. Any unit subject to and in compliance with Phase II acid rain requirements; and
11. Any incinerator having a maximum rated heat input capacity of less than fifty (50) mmBtu per hour.

## (2) Definitions.

(C) Emergency standby boiler—A boiler operated during times of loss of primary power at the installation that is beyond the control of the owner or operator, during routine maintenance, to provide steam for building heat; or to protect essential equipment.

## (3) General Provisions.

(A) No owner or operator of a boiler with a maximum rated heat input capacity of one hundred (100) mmBtu per hour or greater shall allow the unit to emit NO<sub>x</sub> in excess of the emission rates specified in Table 1 as measured pursuant to section (5) of this rule.

**Table 1**  
**Maximum Allowable NO<sub>x</sub> Emission Rates for Boilers**  
**(Pounds of NO<sub>x</sub> per mmBtu)**

Fuel/Boiler Type	Firing Configurations			
	Tangential	Wall	Cyclone	Stoker
Gaseous Fuels Only	0.2	0.2	0.5	-
Distillate Oil	0.3	0.3	-	-
Residual Oil	0.3	0.3	-	-
Coal - Wet Bottom	-	-	0.86	-
Coal - Dry Bottom	0.45	0.5	-	0.5

(B) An owner or operator of a boiler or incinerator with a maximum rated heat input capacity equal to or greater than fifty (50) mmBtu per hour but less than one hundred (100) mmBtu per hour shall complete an annual adjustment or tune up on the combustion process. This adjustment or tune up shall include at a minimum the following items:

1. Inspection, adjustment, cleaning or replacement of fuel burning equipment, including the burners and moving parts necessary for proper operation as specified by the manufacturer;
2. Inspection of the flame pattern or characteristics and adjustments necessary to minimize total emissions of NO<sub>x</sub> and, to the extent practicable, minimize emissions of carbon monoxide; and
3. Inspection of the air to fuel ratio control system and adjustments necessary to ensure proper calibration and operation as specified by the manufacturer.

(E) No owner or operator of a regenerative container glass melting furnace shall allow the unit to emit NO<sub>x</sub> in excess of 5.5 pounds of NO<sub>x</sub> per ton of glass pulled.

(F) No owner or operator of a portland cement kiln shall allow the unit to operate unless good combustion practices are implemented. Each portland cement kiln shall develop a good combustion practice plan that identifies appropriate kiln operating parameters necessary to ensure minimum NO<sub>x</sub> formation. Each kiln operator shall be trained to operate the kiln in accordance with the plan. The parameters included in the plan shall include at a minimum the following:

1. Kiln exit oxygen operating range or a surrogate parameter;
2. Clinker burning zone temperature operating range or a surrogate parameter; and
3. Monitoring and record keeping procedures for each parameter.

(G) Emissions Averaging. An owner or operator may comply with the requirements of subsections (3)(A), (3)(C), (3)(D), (3)(E) and (3)(H) of this rule by averaging between two (2) or more similar emission units provided they are located in the St. Louis ozone nonattainment area and provided that both units are required to comply with the subsections (3)(A), (3)(C), (3)(D), (3)(E) or (3)(H) of this rule.

1. Compliance shall be based on the weighted average of actual NO<sub>x</sub> emissions from the units on a monthly basis. The averaged emissions rate for the units must be equal to or less than the allowable emissions rate for the units as defined in this rule. An owner or operator who elects to comply with an average NO<sub>x</sub> emission limit shall use the following equation to determine compliance:

$$\sum(\text{actual NO}_x \text{ emission rate from each unit} * \text{actual monthly heat input from each unit}) \leq \sum(\text{allowable NO}_x \text{ emission rate from each unit} * \text{actual monthly heat input from each unit})$$

2. NO<sub>x</sub> emission rates shall be calculated from actual data from continuous emissions monitoring system (CEMS), PEMS or established through stack testing at several loads.

3. NO<sub>x</sub> emissions averaging may only occur between emission units operated under the same owner unless a binding legal

agreement between two (2) owners is filed with the director and provided the emission units are located in the St. Louis ozone nonattainment area. The binding legal agreement must specify the following:

A. A commitment between the two (2) owners or operators to comply with the averaging provisions;

B. Identification of the emission units which will be used for averaging;

C. An outline of how the emission units will comply with the averaging provisions;

D. A schedule for submitting the monthly data used to determine compliance with the averaging provisions; and

E. Contacts from each owner or operator who will be responsible for the monthly compliance reports.

(H) Case-By-Case RACT Studies.

1. The owner or operator of an emissions unit subject to this rule but not specifically identified in subsection (3)(A), (3)(B), (3)(C), (3)(D), (3)(E) or (3)(F) of this rule shall conduct and submit by July 1, 2000 a detailed engineering and RACT study for those emission units subject to this rule.

2. Each RACT proposal shall, at a minimum, include the following information:

A. A list of emission units subject to the RACT requirements;

B. The size or capacity of each affected emission unit and the types of fuel combusted or the types and quantities of materials processed or produced by each emission unit;

C. A physical description of each emission unit and its operating characteristics;

D. Estimates of the potential and actual NO<sub>x</sub> emissions from each affected emission unit and associated supporting documentation;

E. A RACT analysis which meets the requirements of subsection (3)(H) of this rule, including technical and economic support documentation identified in subsection (3)(G) of this rule for each affected emission unit;

F. A schedule for completing implementation of the RACT proposal as expeditiously as practicable but not later than April 1, 2001, including interim dates for the issuance of purchase orders, start and completion of process technology and control technology changes and the completion of compliance testing;

G. Testing, monitoring, record keeping and reporting procedures proposed to demonstrate compliance with RACT;

H. An application for an operating permit amendment or application to incorporate the provisions of the RACT proposal; and

I. Additional information requested by the department that is necessary for the evaluation of the RACT proposal.

3. In addition, the RACT analysis shall include:

A. A ranking of the available control options for the affected emission unit in descending order of control effectiveness. Available control options are air pollution control technologies or techniques with a reasonable potential for application to the emission unit. Air pollution control technologies and techniques include the application of production process or methods and control systems for NO<sub>x</sub>. The control technologies and techniques shall include existing controls for the source category and technology transfer controls applied to similar source categories;

B. An evaluation of the technical feasibility of the available control options as required by paragraph (3)(G)1. of this rule. The evaluation of technical feasibility shall be based on physical, chemical and engineering principles. If an analysis is determined to be technically infeasible, the technical difficulties which would preclude the successful use of the control options on the affected emission unit shall be identified;

C. A ranking of the technically feasible control options in order of overall control effectiveness for NO<sub>x</sub> emissions. The list shall present the array of control options and shall include, at a minimum, the following information:

(I) The baseline emissions of NO<sub>x</sub> before implementation of each control option;

(II) The estimated emission reduction potential or the estimated control efficiency of each control option;

(III) The estimated emissions after the application of each control option; and

(IV) The economic impacts of each control option, including both overall cost effectiveness and incremental cost effectiveness; and

D. An evaluation of cost effectiveness of each control option consistent with *OAQPS Control Cost Manual* (Fourth Edition), EPA 450/3-90-006 January 1990 and subsequent revisions. The evaluation shall be conducted in accordance with the following requirements:

(I) The cost effectiveness shall be evaluated in terms of dollars per ton of NO<sub>x</sub> emission reduction;

(II) The cost effectiveness shall be calculated on average and incremental bases for each option. Average cost effectiveness is calculated as the annualized cost of the control option divided by the baseline emissions rate minus the control option emission rate, as shown by the following formula:

#### Cost Effectiveness Equation

Average Cost Effectiveness (\$/ton NO<sub>x</sub> removed) =

$$\frac{\text{Total annualized cost of the control option (\$/yr)}}{\text{Baseline emission rate (tons/yr)} - \text{Control option emission rate (tons/yr)}}$$

(III) For purposes of this paragraph, baseline emission rate represents the maximum emissions before the implementation of the control option. The baseline emissions rate shall be established using either test results or approved emission factors and historical operating data; and

(IV) For purposes of this paragraph, the incremental cost effectiveness calculation compares the costs and emission level of a control option to those of the next most stringent option, as shown by the following formula:

#### Incremental Cost Equation

Incremental Cost per incremental ton removed (\$/ton) =

$$\frac{\text{Total annualized cost for a control option (\$/yr)} - \text{Total annualized cost for the next most stringent control option (\$/yr)}}{\text{The emission rate for the more stringent control option (tons/yr)} - \text{The emission rate for the control option (tons/yr)}}$$

4. Based upon this study, the director shall provide a case-specific RACT determination which shall be implemented by the owner or operator of the unit as expeditiously as practicable but in no case later than May 1, 2002. This case-specific RACT determination shall be submitted to the administrator of the U.S. Environmental Protection Agency.

(I) Any unit during periods of start up, shutdown, or malfunction shall comply with the requirements of 10 CSR 10-6.050.

(4) Reporting and Record Keeping.

(A) Reporting. Reporting shall be based on the test methods identified in section (5) of this rule.

1. The owner or operator of an emissions unit subject to subsections (3)(A), (3)(C), (3)(D), (3)(E), (3)(F) and (3)(G) of this rule shall comply with the following requirements:

A. Submit for each NO<sub>x</sub> emissions unit that uses a CEMS to demonstrate compliance, an annual report containing the date, time and emissions rate in pounds NO<sub>x</sub> per mmBtu of all thirty (30)-day rolling averages greater than the emission rates allowed under section (3) of this rule;

B. Submit for each NO<sub>x</sub> emissions unit which uses stack tests to demonstrate compliance, an annual report identifying monthly fuel usage and monthly total heat input; and

C. Submit a written report of all stack tests completed after controls are effective to the director within sixty (60) days after completion of sample and data collection.

2. The owner or operator of an emissions unit subject to subsection (3)(H) of this rule shall comply with the reporting requirements established in the case-by-case RACT determination approved by the director. The owners or operators of emissions units complying with the averaging provisions of subsection (3)(H) shall submit to the director within thirty (30) days after the end of each calendar month a compliance report stating the averaged emission rate. The compliance report shall also include the data used to determine the averaged emission rate. If the average emission rate exceeds the allowable emission rate, the owners and operators shall determine which owner or operator is responsible for the violation. The owners and operators in the compliance report shall submit the identity of the responsible owner or operator. The department will take enforcement action against only the owner or operator responsible for the violation. However, if the owners or operators do not submit within thirty (30) days the identity of the violator, both owners or operators shall be responsible for the violation.

(B) Record Keeping.

1. Each owner or operator of an emissions unit subject to subsections (3)(A), (3)(C), (3)(D), (3)(E), (3)(F) and (3)(G) of this rule shall maintain records of the following:

A. Total fuel consumed on a monthly basis unless the unit is operating a CEMS or predictive emissions monitoring system (PEMS);

B. The total heat input for each emissions unit on a monthly basis unless the unit is operating a CEMS or a PEMS;

C. Reports of all stack testing conducted to meet the requirements of this rule;

D. All other data collected by a CEMS or a PEMS necessary to convert the monitoring data to the units of the applicable emission limitation;

E. If a CEMS is used, all performance evaluations conducted in the past year;

F. All CEMS or monitoring device calibration checks;

G. All monitoring system, monitoring device and performance testing measurements;

H. Records of adjustments and maintenance performed on monitoring systems and devices; and

I. A log identifying each period during which the CEMS was inoperative, except for zero and span checks, and the nature of the repairs and adjustments performed to make the system operative.

2. The owner or operator of an emissions unit subject to subsection (3)(H) of this rule shall comply with the record keeping requirements established in the case-by-case RACT determination approved by the director.

3. All records must be kept on-site for a period of five (5) years and made available to the department upon request.

(5) Test Methods.

(A) Compliance Testing. Initial compliance for all units subject to subsections (3)(A), (3)(C), (3)(D), (3)(E) or (3)(G) of this rule shall be determined through a stack test performed prior to the implementation date under section (1) of this rule except those units complying with the provisions of subsection (5)(B) of this rule. After the initial stack test, stack tests shall be required every

three (3) years to determine compliance except for units complying with the provisions of subsection (5)(B) of this rule. The following test methods shall be used for all stack tests:

1. 40 CFR Part 60 Appendix A, Method 7, 7A, 7C, 7D or 7E shall be used to determine NO<sub>x</sub> concentrations in stack gases;

2. 40 CFR Part 60 Appendix A, Method 1A, 2, 2A, 2B, 2C, 2D, 2F, 2G, or 2H shall be used to determine the exit velocity of stack gases;

3. 40 CFR Part 60 Appendix A, Method 3 or 3A shall be used to determine carbon dioxide, oxygen, excess air and molecular weight of stack gases;

4. 40 CFR Part 60 Appendix A, Method 4 shall be used to determine moisture content of stack gases from applicable stationary sources; or

5. 40 CFR Part 60 Appendix A, Method 20 may be used to determine NO<sub>x</sub> concentrations for stationary combustion turbines.

(B) Monitoring. As an alternative to the compliance testing required under subsection (5)(A) for units subject to subsections (3)(A), (3)(C), (3)(D), (3)(E) and (3)(G) of this rule, an owner or operator of an emission unit may install, calibrate, maintain and operate a CEMS or a PEMS approved by the director and the U.S. Environmental Protection Agency (EPA), or use an equivalent procedure for measuring or estimating NO<sub>x</sub> emissions approved by the director and the EPA. For units operating CEMS, PEMS or an equivalent procedure for estimating NO<sub>x</sub> emissions, the following requirements shall apply:

1. Compliance shall be measured on a thirty (30)-day rolling average;

2. All valid data shall be used for calculating NO<sub>x</sub> emissions rates;

3. The procedures under 40 CFR 60.13(d), (e) and (f) and 40 CFR Part 60 Appendix B, Performance Specification 2 shall be followed, or other procedures approved by the director; for the installation, evaluation and operation of CEMS or PEMS;

4. Quarterly accuracy and daily calibration drift tests shall be performed in accordance with 40 CFR Part 60 Appendix F, or other tests approved by the director; and

5. CEMS installed, certified and operated in accordance with 40 CFR Part 75 are deemed to be approved by the director to meet the monitoring and quality assurance requirements of this subsection.

*REVISED PRIVATE COST: This proposed rule will cost \$13,101,686 in the aggregate.*

**REVISED FISCAL NOTE  
PRIVATE ENTITY COST**

**I. RULE NUMBER**

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 5 - Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10-5.510 Control of Emissions of Nitrogen Oxides

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by The adoption of the Proposed Rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
1	Brewery	\$12,535,799
1	Chemical-Based Materials Manufacturer	\$68,405
1	Aerospace Manufacturing Plant	\$38,648
1	Automobile Manufacturer	\$281,428
1	Glass Melting Furnace	\$83,383
1	Portland Cement Kiln	\$52,167
1	Inorganic Chemical Manufacturer	\$41,856
Total		\$13,101,686

\*Estimated cost is reported as 10-year aggregate.

**III. WORKSHEET**

**Table A.**

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Sources affected by subsection (3)(A)... Boilers with a maximum rated heat input capacity of 100 mmBtu or greater.	\$0	\$0	\$292,700	\$1,756,197	\$1,497,537	\$1,498,877

**Table B.**

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Sources affected by subsection (3)(B)... Boilers with a maximum rated heat input capacity equal to or greater than 50 mmBtu but less than 100 mmBtu.	\$0	\$0	\$687	\$4,120	\$4,285	\$4,456

**Table C.**

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Sources affected by subsection (3)(H)... Case-By-Case RACT Study	\$0	\$0	\$5,000	\$4,000	\$4,160	\$4,326

**Table D.**

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Sources affected by subsection (3)(E)... Glass melting furnaces	\$0	\$0	\$20,416	\$2,600	\$2704	\$23,612

**Table E.**

	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
Sources affected by subsection (3)(F)... Portland cement kilns	\$0	\$0	\$10,416	\$2,600	\$2,704	\$13,212

**IV. ASSUMPTIONS**

1. Assuming a four percent per year increase in the cost of testing/monitoring, tune-up, recordkeeping and reporting.
2. All values in Tables A., B. and C. are rounded to the nearest dollar.
3. In Tables A., B. and C., FY2002 includes only May and June of 2002.
4. Source information pertaining to Table A. for subsection (3)(A) provided by three companies: Solutia, Inc., General Motors, and Anheuser-Busch.

Solutia, Inc. provided cost estimates for initial compliance testing (\$10,000), additional compliance testing every three years ( $\$10,000 * (1 + (0.04 * \text{number of years}))$ ), annual recordkeeping (\$2,500) and reporting costs (\$1,000). We are assuming Solutia, Inc. will accrue no additional capital costs.

General Motors estimated their total cost of compliance per year (\$30,000). We are assuming this estimate includes capital, testing/monitoring, recordkeeping and reporting costs.

Anheuser-Busch estimated their capital costs (\$10.6 million), initial testing costs (\$250,000), and additional compliance testing (\$125,000) every three years. The capital cost was amortized over 10 years with eight percent (8%) interest.

5. Source information pertaining to Table B for subsection (3)(B) provided by Boeing St. Louis. This information for FY2003 includes an annual boiler tuning cost (\$3,920) and recordkeeping/ reporting costs (\$200). This cost is assumed to continue for the life of the rule and increase four percent (4%) annually.
6. Source information pertaining to Table C. for subsection (3)(F) was provided by The PQ Corporation. This RACT study would be a one time cost and we are assuming minimal additional annual cost for recordkeeping only, although additional costs may occur from controls identified in the RACT study. Recordkeeping costs are assumed to be \$4,000 per year and increase four percent (4%) annually.

7. The life of the rule is expected to be 10 years.
8. Cost for the glass melting furnaces are based on \$2500 per year in record keeping and reporting costs and \$10,000 for compliance testing. These cost are estimated to increase four percent (4%) annually.
9. Cost for the portland cement kiln is based on \$2500 per year in record keeping and reporting costs and \$10,000 for compliance testing. These cost are estimated to increase four percent (4%) annually.

**Title 10—DEPARTMENT OF NATURAL RESOURCES****Division 10—Air Conservation Commission****Chapter 5—Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area****ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 1999, the commission adopts a rule as follows:

10 CSR 10-5.520 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2020–2024). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** Comments were received from Ameren, the Regulatory Environmental Group for Missouri (REGFORM), Solutia Inc., Mallinckrodt Inc., the Dow Chemical Company, P.D. George, Anheuser-Busch Companies, U.S. Environmental Protection Agency (EPA), the Regional Commerce and Growth Association (RCGA), the Metropolitan St. Louis Sewer District (MSD), and the City of St. Louis Department of Public Safety Division of Air Pollution Control (DAPC). The majority of the comments received focused on ambiguity found within the proposed rule text. The applicability section was one major source of concern, as were the dates for submittal and implementation.

**COMMENT:** Ameren and REGFORM commented that this rulemaking should not apply to fuel combustion equipment.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment and is adding an exemption for fuel combustion equipment to subsection (3)(H)1. of the proposed rule.

**COMMENT:** REGFORM, Solutia Inc., and Mallinckrodt Inc. commented that the applicability section of this proposed rulemaking should be amended to state that a facility that is already subject to, or exempt from, reasonably available control technology (RACT) requirements for volatile organic compounds (VOC) emissions from a production process or a raw material, intermediate or product tank is exempt from the provisions of this rule.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment and has amended section (1) of this proposed rule to more clearly state that production processes affected or exempted from current or proposed RACT rules are exempted from this proposed rulemaking.

**COMMENT:** REGFORM, Mallinckrodt Inc., Solutia Inc., Dow Chemical Company and P.D. George commented that language should be added to the rule to exempt emission units that are required to meet more stringent VOC emission limits, such as maximum achievable control technologies, new source performance standards, etc.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment and is adding an exemption in subsection (1)(C) of this proposed rule for production processes that are affected by federal regulation promulgated in 40 CFR Parts 60, 61, or 63.

**COMMENT:** REGFORM, Anheuser-Busch Company and P.D. George commented that the some major sources have high potential emissions, but very low actual emissions. They requested that the rulemaking be amended to include an exemption for low actual emitting facilities. Anheuser-Busch Company supplied several examples of emission criteria from other states.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with this comment in part. The department is adding a low emissions threshold of 4 tons per year for a single emission unit in subsection (3)(H)2. of this proposed rule. However, the department believes that there must be an aggregate provision for a group of very small sources that could be aggregated together to create significant emissions that are cost-effectively controllable. Therefore, the department has also added language to address these “like” units and their aggregate emissions.

**COMMENT:** REGFORM, Solutia Inc., Dow Chemical Company and P.D. George commented that the department did not allow sufficient time to implement the control strategy determined in the RACT study. All commenters commented that the department should amend the rule to allow 6 months for a department review and 24 months for implementation of the control strategy.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees that the language in the proposed rule needs to be amended. The department has amended subsection (3)(C) to state that the department has 30 days to find the RACT proposal complete and 60 days after the completeness finding to make a determination of approvability. The department has also amended subsections (3)(D) and (3)(F)6. to change the final implementation date to September 1, 2002, which is approximately 24 months following the 90 day department review.

**COMMENT:** REGFORM and Dow Chemical Company commented that the proposed rulemaking does not outline the process by which a RACT study will be modified. REGFORM requested that the department amend the proposed language to include a description of the interaction that will be required in amending a RACT study.

**RESPONSE:** The department does not feel that the process by which a RACT study will be approved, denied, or modified lends itself to rulemaking language. The department is planning to work closely with each individual installation that submits a RACT study. This review will need to be similar to the review that is done through the construction permits unit of the Air Pollution Control Program when conducting a best available control technology (BACT) analysis. The department feels that this issue is better addressed by current department procedures. Therefore, there have been no changes made in response this comment.

**COMMENT:** REGFORM and Dow Chemical Company commented that the \$50 an hour cost figure is too low and that 164 hours was not sufficient time to complete the RACT study. Dow commented that the department should use an estimate of \$100 per hour for cost and 320 man-hours as an estimated preparation time.

**RESPONSE AND EXPLANATION OF CHANGE:** The department is amending the private entity fiscal note as a result of these comments. The department feels that the information given by the private entities is more conservative than the original estimates given in the proposed rulemaking. Therefore, the department has adjusted the fiscal note assumptions to reflect a cost of \$100 per hour and 320 hours.

**COMMENT:** MSD commented that publicly owned treatment works should be exempted from this rule. MSD stated that sewage sludge incinerator are regulated by federal regulations and are exempted from regulation by the state of Illinois.

RESPONSE: The department has added subsection (3)(H) of the proposed rule to exempt combustion sources from this rulemaking. This exemption does include incinerators. However, the department is not exempting an entire publicly owned treatment works (POTW) operation because other non-combustion VOC sources may exist at these installations. No changes have been made to this rulemaking as a direct result of this comment.

COMMENT: MSD commented that if POTW are not exempted they would support a floor of 30 tons per year being added to the applicability section of this rule to prevent unnecessary expense from controls.

RESPONSE: The department has added an actual emission exemption to this rulemaking in subsection (3)(H)2. The department does not feel that the 30 tons per year level is appropriate for an exemption. There are many cases where an emission unit with 30 tons per year of emissions could be controlled cost effectively. The department is not amending this rulemaking as a result of this comment.

COMMENT: MSD commented that the time frame for implementation of the RACT study should be set at 16 months from approval of the RACT study instead of prior to June 1, 2001.

RESPONSE: The department has amended the time frame for implementation of this rulemaking as a result of other comments received. The department has allowed 24 months from the time of anticipated approval of the RACT study for implementation. The department has not amended this rulemaking in response to this comment.

COMMENT: MSD questioned the use of \$5,000 per ton of VOC reduction as being the department's definition of reasonable for a RACT study.

RESPONSE: It was not the department's intent to define reasonable as \$5,000 per ton. The department was attempting to be conservative with the overall cost estimate for this rulemaking and felt that \$5,000 per ton should be a fairly conservative representation of reasonable control technology cost. The department has not amended this rulemaking in response to this comment.

COMMENT: Mallinckrodt Inc. and Solutia Inc. commented that the department should amend the applicability section of the proposed rule to change the word facility to installation. Each commenter stated that the word facility is not defined while installation is defined in the *Code of State Regulations*.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has made the proposed change.

COMMENT: DAPC commented that the department should clarify what sources are affected by this rulemaking.

RESPONSE: The department has amended section (1) of the proposed rulemaking to more clearly outline what type of sources are affected by this rulemaking. The department has not amended this rulemaking in response to this comment.

COMMENT: The DAPC commented that they did not believe that facilities will have the opportunity to explore all possible RACT options prior to the current June 1, 2000 deadline. The DAPC suggested that the department should allow one year from the adoption of the rule for submittal of the study and two years after adoption for implementation.

RESPONSE: The department has amended the time frames for implementation based on other comments received. However, the department does not believe that moving the submittal date is possible based on conversations with the EPA. The EPA has stated that implementation must occur as soon as possible and moving the submittal date would only delay implementation. The department is not amending this rulemaking as a result of this comment.

COMMENT: The Dow Chemical Company commented that the department should amend the applicability section of the proposed rulemaking to define the term facility as any single emission unit that emits VOC. Dow stated that this would clarify the department's intent.

RESPONSE: The department disagrees with this comment. The department has amended section (1) of this rulemaking to clarify the intent based on other comments. In addition, the department did not intend for the term facility to apply to a single emission unit, but rather to an entire installation. Therefore, the department is not amending the proposed rule in response to this comment.

COMMENT: The Dow Chemical Company commented that the department should not require a RACT proposal for emission units whose VOC emissions clearly are not amenable to installation of emission control technologies. Dow also supplied suggested rule language for this exemption.

RESPONSE: The department believes that the emission units referenced in this comment will be easily addressed in the RACT proposal as being technically infeasible to control. The department will except as part of the RACT proposal good engineering judgment as to the possibility for control as well as any safety concerns with the control of a process. In addition, the department has discussed this comment and the suggested language with the EPA. The EPA has expressed significant concern with this comment and suggested language. Therefore, the department is not amending the proposed rulemaking in response to this comment.

COMMENT: The Dow Chemical Company commented that the department should not require prior approval of alternative methods to quantify VOC emission or potential emissions.

RESPONSE AND EXPLANATION OF CHANGE: The department has amended subsection (3)(A)2. to include language that establishes more options for estimating actual and potential emissions. This amendment is consistent with the department's current policies on emission estimation. This added language also allows an installation additional flexibility in the completion of RACT proposals.

COMMENT: The Dow Chemical Company commented that the department should not impose duplicative requirements on both the "owner" and the "operator" of a facility.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and is amending the language of the proposed rulemaking to say "owner or operator".

COMMENT: The Dow Chemical Company commented that the department should allow additional time for submission of RACT proposals. Dow states that the RACT proposal development is too time consuming to complete in the time before June 1, 2000.

RESPONSE: The department realizes that the RACT study will be a significant burden on those affected by this proposed rulemaking. However, the department believes that the affected installations will be able to complete the studies on or before June 1, 2000. This rule is a requirement under the Clean Air Act and should have been implemented earlier. The department has not made any changes to the proposed rulemakings as a result of this comment.

COMMENT: The Dow Chemical Company commented that the department should not require interim dates in the RACT proposals. Dow also commented that the department should explicitly state that these dates are not enforceable if they are retained in the rulemaking.

RESPONSE: The department does feel that the interim dates are vital to the RACT proposals. The department does intend to use these interim dates for evaluation of the RACT proposals. The department agrees that these dates will not be used for enforcement purposes. Therefore, no changes have been made to the rule language as a result of this comment.

COMMENT: The Dow Chemical Company commented that the RACT proposal should not have to include an application to revise the operating permit.

RESPONSE: The department does not agree with this comment. An installation is able to modify an operating permit prior to its issuance. The operating permit unit works closely with the majority of facilities receiving a permit and is willing to revise any permit that is deemed necessary. Therefore, the department has not amended the proposed rule as a result of this comment.

COMMENT: The Dow Chemical Company commented that the department should either remove the requirements of subsection (3)(F)9. or add a similar requirement outside of subsection (3)(F) since subsection (3)(F) deals with the RACT proposals to be submitted.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and has removed subsection (3)(F)9. and has added subsection (3)(I).

COMMENT: The Dow Chemical Company commented that the department should require a bottom up RACT analysis rather than a top down RACT analysis.

RESPONSE: The department does not agree with this comment. The RACT analysis required in the proposed rule is consistent with current analysis done by the department as well as the analysis that is required in similar regulations in other states. Therefore, no changes have been made to the rule language as a result of this comment.

COMMENT: The Dow Chemical Company commented that the department should limit its review to information that is freely and nonconfidentially available to the owner or operator of the facility.

RESPONSE: The department does not agree with this comment. This rulemaking will require a facility to investigate any reasonable control strategies for a process. The department does not interpret this rule to say nor intended this rule to say that a facility will need to access confidential information from another, possibly competing, facility. The department would not see this type of a requirement as reasonable. As was stated above, the department is committed to working with each affected entity during the development and review of the RACT proposal. The department is not amending the proposed rule as a result of this comment.

COMMENT: The Dow Chemical Company commented that the department should not require facilities to use the Office of Air Quality Planning and Standards (OAQPS) *Control Cost Manual* for cost effectiveness evaluation.

RESPONSE: The department feels that the use of this manual is essential to the evaluation of the cost effectiveness of the RACT proposals. This manual is a well established methodology for evaluating the control measures. This methodology will aid the department in the review of the RACT proposals. The use of the cost manual will also give industry some assurance that each evaluation will be conducted by certain guidelines. Dow was concerned about the availability of this manual. The EPA has assured the department that the manual is available to the public through the EPA's website. The department and the EPA feel that the manual is necessary for use in this rulemaking and have not made the recommended amendment to this rulemaking. Therefore, no changes have been made to the rule language as a result of this comment.

COMMENT: The Dow Chemical Company commented that subsection (4)(C) was unduly burdensome and should be revised to require only records related to the RACT proposal be retained. Dow also commented that the department should allow records to be kept offsite and electronically.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with this comment and is amending the language of subsection (4)(C) to reflect that suggested. The department is not amending the language to allow offsite storage of data. Allowing offsite storage of data would not be consistent with current department policy and the Title V Operating Permit regulations. The department currently allows the use electronic media for record keeping, so there is no change necessary.

COMMENT: The EPA commented that the department should spell out VOC in the title for consistency.

RESPONSE AND EXPLANATION OF CHANGE: The department has amended the title to reflect the suggested change.

COMMENT: The EPA made several comments directed at the narrative related to the proposed rule.

RESPONSE: The narrative to be submitted with this rule was not released for public hearing. Therefore, the department will address comments related to the narrative at a later time.

COMMENT: The RCGA commented that the department should work to remove the ambiguity from the proposed rule.

RESPONSE: The department has made several amendments based on comments received and believes that these amendments have made significant progress toward removing the ambiguity. There was no additional amendment to the proposed rule as a result of this comment.

## **10 CSR 10-5.520 Control of Volatile Organic Compound Emissions From Existing Major Sources**

(1) Applicability. This rule applies to any installation in the counties of St. Charles, St. Louis, Franklin, or Jefferson or the City of St. Louis that have the potential to emit greater than one hundred (100) tons per year of volatile organic compounds. This rule does not apply to any installation that meets one or more of the following:

(A) One or more rule under Title 10, Division 10, Chapter 5 of the *Code of State Regulations* (CSR) applies to volatile organic compound (VOC) emissions from a product process, or a raw material, intermediate or product tank;

(B) Is exempted from one or more rule under Title 10, Division 10, Chapter 5 of the CSR as it applies to VOC emissions from a product process, or a raw material, intermediate or product tank; or

(C) Is affected by any federal rulemaking promulgated under 40 CFR part 60, 40 CFR part 61, or 40 CFR part 63 applies to VOC emissions from a product process, or a raw material, intermediate or product tank.

(3) General Provisions.

(A) An owner or operator, to which this rule applies, shall provide the department with the following information on or before June 1, 2000:

1. An identification of each installation including individual emission units to which this rule applies; and

2. A determination of the total potential to emit and the actual emission of VOCs for the 1998 and 1999 calendar years from each emission unit at the facility. An owner or operator shall use the following hierarchy as a guide in determining the most desirable emission data to report to the department. If data is not available for an emission estimation method or an emission estimation method is impractical for a source, then the subsequent emission estimation method should be used in its place—

A. Continuous Emission Monitoring System (CEMS);  
B. Stack tests;  
C. Material/mass balance;  
D. AP-42 (Environmental Protection Agency (EPA) *Compilation of Air Pollution Emission Factors*) or FIRE (Factor Information and Retrieval System);  
E. Other EPA documents;  
F. Sound engineering calculations; or  
G. Facilities shall obtain department preapproval of emission estimation methods other than those listed in paragraphs (3)(A)2.A.-F. of this rule before using any such method to estimate emissions in the submission of the RACT study.

(B) The owner or operator of a major VOC emitting facility shall on or before June 1, 2000, provide to the department a written proposal for RACT for each VOC emission unit at the facility. The RACT proposal shall include, at a minimum, the information contained in subsection (3)(F) of this rule.

(C) The department will make a finding of completeness within thirty (30) calendar days of receiving a RACT proposal. The department will make a determination of approvability within sixty (60) calendar days of the finding of completeness.

(D) Upon receipt of notice of the department's approval of the RACT proposal, the facility shall begin implementation of the measures necessary to comply with the approved or modified RACT proposal. Implementation of the RACT proposal shall be completed according to the schedule established in the approved RACT proposal and shall be as expeditious as practicable but no later than September 1, 2002.

(F) Each RACT proposal shall, at a minimum, include the following information:

1. A list of emission units subject to the RACT requirements;
2. The size or capacity of each affected emission unit and the types of fuel combusted or the types and quantities of materials processed or produced by each emission unit;
3. A physical description of each emission unit and its operating characteristics;
4. Estimates of the potential and actual VOC emissions from each affected emission unit and associated supporting documentation;
5. A RACT analysis which meets the requirements of subsection (3)(A) of this rule, including technical and economic support documentation identified in subsection (3)(G) of this rule for each affected emission unit;
6. A schedule for completing implementation of the RACT proposal as expeditiously as practicable but not later than September 1, 2002, including interim dates for the issuance of purchase orders, start and completion of process technology and control technology changes and the completion of compliance testing;
7. Testing, monitoring, record keeping and reporting procedures proposed to demonstrate compliance with RACT; and
8. An application for an operating permit amendment or application to incorporate the provisions of the RACT proposal.

(H) The following emission units are exempted and do not require evaluation in the RACT study:

1. Any emission unit that is used to combust fuel; and
2. Any emission unit with actual VOC emissions less than four (4) tons per year during each calendar year from 1995 through present unless such emission unit can be aggregated with like, same three (3)-digit source classification code, emission units with the total having greater than eight (8) tons of VOC per year in any one calendar year from 1995 through present.

(I) The owner or operator shall submit additional information requested by the department that is necessary for the evaluation of the RACT proposal. Such information shall be submitted within thirty (30) days after the submitter's receipt of the department's request, or such later date as is mutually agreed.

(C) Documentation supporting RACT proposals and documentation of implementation of an approved or modified RACT proposal must be kept on-site for a period of five (5) years and must be made available to the department upon request.

*REVISED PRIVATE COST: This proposed rule will cost \$160,000 during fiscal year 2000. The aggregate cost of this rulemaking is estimated to be \$6,748,000 over the lifetime of the rule.*

**REVISED FISCAL NOTE  
PRIVATE ENTITY COST****I. RULE NUMBER**Title: 10 – Department of Natural ResourcesDivision: 10 - Air Conservation CommissionChapter: 5 – Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan AreaType of Rulemaking: Proposed RuleRule Number and Name: 10 CSR 10-5.520 – Control of Volatile Organic Compounds Emissions From Existing Major Sources**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the Proposed Rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
5	Unknown	\$6,748,000*

\*Cost is reported as 10-yr. aggregate.

**III. WORKSHEET**Cost per facility =  $320 \times 100 = \$32,000$ Total Cost during fiscal year 2000 =  $5 \times \$32,000 = \$160,000$ 

Control Costs for 9 years after FY2000:

Min. Cost = 40 man-hours  $\times$  \$100 per man-hour = \$4,000 per year3 facilities  $\times$  \$4,000 per year = \$12,000Max. Cost = 90% control  $\times$  80 tpy = 72 tpy reduction72 tpy  $\times$  \$5,000 per ton cost = \$360,000 per year\$360,000 per year  $\times$  2 facilities = \$720,000 per year

Total annualized aggregation for FY2001 – 2010

 $9 \times (\$12,000 + \$720,000) = \$6,588,000$ **IV. ASSUMPTIONS**

1. The department has estimated that five facilities will meet the applicability requirements of this rulemaking.
2. The department has assumed that each RACT study required by this rulemaking will take approximately 1 month or 320 man-hours to complete.
3. The department has assumed that each company will incur a cost of \$100 per man-hour to complete the study.
4. Additional costs will occur as a result of implementation of the findings of the RACT study.

5. The costs associated with this rule are being presented in annualized aggregate.
6. The lifetime of this rulemaking has been assumed to be 10 years.
7. The department assumed that three facilities are able to comply with only monitoring requirements and two facilities require control equipment installation. The three facilities represent the minimum cost of compliance and the two facilities represent the maximum cost of compliance.
8. The department assumed 40 hours per year for each facility required to monitor emissions. The department assumed \$100 per hour for staff time for monitoring emissions.
9. The department assumed that the maximum control requirements would be a 90% reduction in VOC emissions. Control equipment would be required. The department estimated \$5,000 per ton of VOC reduction.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 10—Air Conservation Commission**  
**Chapter 5—Air Quality Standards and Air Pollution**  
**Control Rules Specific to the St. Louis Metropolitan**  
**Area**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 1999, the commission adopts a rule as follows:

10 CSR 10-5.530 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2025-2033). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Air Pollution Control Program received seven comments from two sources: the U. S. Environmental Protection Agency (EPA) and the City of St. Louis, Department of Public Safety, Division of Air Pollution Control.

**COMMENT:** The EPA commented that paragraph (3)(A)2. should 1) clearly describe what is required for compliance when using the allowed alternate approach, 2) further explain the equations and expand the variable table to include the numerical values that represent the maximum volatile organic compound (VOC) content for various coatings, 3) clarify the purpose of the 0.9 multiplying factor used in equations and add it to the variable table, 4) define a lookback period if it is intended to make sure that the facility makes further reductions beyond what it was doing prior to reasonably available control technology (RACT) and clarify how pre-RACT VOC values are used in the inequality equations, and 5) in the last sentence of this paragraph change the word allowed to allowable.

**RESPONSE AND EXPLANATION OF CHANGE:** The department has reviewed all parts of this comment and responds as follows. In response to part 1) of this comment, the department has revised the language in the first two sentences of this paragraph to further clarify this approach and requirements. The department believes that this revised language to the lead-in sentence further clarifies the equation into a straightforward concept to address part 2) of this comment and, in addition, a note has been added to the variable table to explain the numerical values used in the variable table. In response to part 3) of this comment, an additional note was added to the variable table to explain that the 0.9 multiplying factor is used because sources using the averaging approach must demonstrate that the emissions are no greater than 90 percent of what they would be if they were using compliant coatings. Considering part 4) of this comment, it should be noted that it is the intent of this rule that sources already using a coating with a VOC content less than what is allowed by this rule should continue to use the lower VOC content coating. In addition, the clarification language added at the end of this paragraph with the example clarifies how the pre-RACT VOC values are used in the inequality equations. Since the pre-RACT data is used, the department agrees that records should be retained and believes that the requirements in paragraph (4)(B)1. accomplishes this. In response to part 5) of this comment, the department has changed the word allowed to allowable.

**COMMENT:** The EPA commented that paragraph (3)(A)3. should be revised to state that equivalence of the control system must be demonstrated in accordance with subparagraph (3)(C)1.B.

**RESPONSE AND EXPLANATION OF CHANGE:** The department has revised the language in this paragraph and in paragraph (3)(A)4. to include a reference to the compliance section of the rule.

**COMMENT:** The EPA commented that paragraph (3)(A)4. should be revised to state the requirements which the combination of methods must meet and how compliance is determined.

**RESPONSE AND EXPLANATION OF CHANGE:** After consideration of this comment, the department has added new subparagraph (3)(C)1.C. to address compliance requirements where a combination of methods are used to meet the rule requirements.

**COMMENT:** The EPA commented that the first sentence in subparagraph (3)(C)1.A. should change the word support to demonstrate.

**RESPONSE AND EXPLANATION OF CHANGE:** The department has revised the last sentence of this subparagraph to use the word demonstrate in place of support.

**COMMENT:** The EPA commented that, because the averaging approach is complex, it is important to have adequate records to verify that actual emissions are less than the allowable emissions on a plantwide aggregate basis. The rule should make clear what records are to be kept and what procedures the source must follow to document that they are in compliance with the rule.

**RESPONSE AND EXPLANATION OF CHANGE:** As a result of this comment, the department has added new subsection (3)(D) to clarify special requirements for sources using an averaging approach.

**COMMENT:** The EPA commented that they have recently added three new test methods under 40 CFR Part 60, Appendix A for measuring flow with abnormal properties (e.g. cyclonic); Methods 2F, 2G and 2H. They recommend that these new test methods be included as part of the test methods paragraph (5)(C)3.

**RESPONSE AND EXPLANATION OF CHANGE:** As recommended, the department has added new subparagraphs (5)(C)3.E., (5)(C)3.F. and (5)(C)3.G. to the test methods section of this rule.

**COMMENT:** The City of St. Louis, Department of Public Safety, Division of Air Pollution Control commented that the rule is unclear on how to calculate the potential to emit for applicable facilities, especially facilities that apply coatings by hand. They request clarification on how the potential to emit is to be measured for the purposes of the rule.

**RESPONSE:** The department believes that the term, potential to emit, as defined in the definitions rule 10 CSR 10-6.020 is adequate for the purposes of this rule and does not believe that a unique definition for this rule is necessary because it could create more confusion for rule interpretation. Therefore, no changes have been made to the rule language as a result of this comment.

**10 CSR 10-5.530 Control of Volatile Organic Compound Emissions From Wood Furniture Manufacturing Operations**

**(3) General Provisions.**

**(A) Restriction of Emissions.**

1. The owner or operator of an affected source shall limit VOC emissions from finishing operations by complying with one of the following requirements:

A. Where only topcoat is applied without sealers, the topcoat shall have a VOC content no greater than Table 1; or

**Table 1**

	kg VOC/kg solids (as applied)	lb VOC/lb solids (as applied)
Topcoat	0.8	0.8

B. Where topcoat and sealers are applied and—

(I) Where sealer is not acid-cured alkyd amino vinyl or topcoat is not acid-cured alkyd amino conversion varnish, the VOC contents shall be no more than shown in Table 2;

**Table 2**

	kg VOC/kg solids (as applied)	lb VOC/lb solids (as applied)
Sealer	1.9	1.9
Topcoat	1.8	1.8

(II) Where sealer is acid-cured alkyd amino vinyl and topcoat is acid-cured alkyd amino conversion varnish, the VOC contents shall be no more than shown in Table 3;

**Table 3**

	kg VOC/kg solids (as applied)	lb VOC/lb solids (as applied)
Sealer	2.3	2.3
Topcoat	2.0	2.0

(III) Where sealer is not acid-cured alkyd amino vinyl and topcoat is acid-cured alkyd amino conversion varnish, the VOC contents shall be no more than shown in Table 4; or

**Table 4**

	kg VOC/kg solids (as applied)	lb VOC/lb solids (as applied)
Sealer	1.9	1.9
Topcoat	2.0	2.0

(IV) Where sealer is acid-cured alkyd amino vinyl and topcoat is not acid-cured alkyd amino conversion varnish, the VOC contents shall be no more than shown in Table 5.

**Table 5**

	kg VOC/kg solids (as applied)	lb VOC/lb solids (as applied)
Sealer	2.3	2.3
Topcoat	1.8	1.8

2. As an alternate to the finish operation requirements of paragraph (3)(A)1. of this rule, the owner or operator of an affected source may use an averaging approach to verify compliance by using this paragraph. Compliance is demonstrated when actual emissions from the affected source are less than or equal to allowable emissions using one of the following inequalities:

$$0.9(0.8(TC_1 + TC_2 + \dots)) \geq [(ER_{TC1})(TC_1) + (ER_{TC2})(TC_2) + \dots] \quad (1)$$

$$0.9\{[1.8(TC_1 + TC_2 + \dots)] + [1.9(SE_1 + SE_2 + \dots)] + [9.0(WC_1 + WC_2 + \dots)] + [1.2(BC_1 + BC_2 + \dots)] + [0.791(ST_1 + ST_2 + \dots)]\} \geq [ER_{TC1}(TC_1) + ER_{TC2}(TC_2) + \dots] + [ER_{SE1}(SE_1) + ER_{SE2}(SE_2) + \dots] + [ER_{WC1}(WC_1) + ER_{WC2}(WC_2) + \dots] + [ER_{BC1}(BC_1) + ER_{BC2}(BC_2) + \dots] + [ER_{ST1}(ST_1) + ER_{ST2}(ST_2) + \dots] \quad (2)$$

where:

TC<sub>i</sub> = kilograms of solids of topcoat “i” used;  
SE<sub>i</sub> = kilograms of solids of sealer “i” used;  
WC<sub>i</sub> = kilograms of solids of washcoat “i” used;  
BC<sub>i</sub> = kilograms of solids of basecoat “i” used;  
ST<sub>i</sub> = liters of stain “i” used;  
ER<sub>TCi</sub> = VOC content of topcoat “i” in kg VOC/kg solids, as applied;  
ER<sub>SEi</sub> = VOC content of sealer “i” in kg VOC/kg solids, as

applied;

ER<sub>WCi</sub> = VOC content of washcoat “i” in kg VOC/kg solids, as applied;

ER<sub>BCi</sub> = VOC content of basecoat “i” in kg VOC/kg solids, as applied; and

ER<sub>STi</sub> = VOC content of stain “i” in kg VOC/liter (kg/l), as applied.

Note 1: Various numeric values used in inequalities (0.8, 1.8, 1.9, etc.) are maximum allowable VOC contents for various coatings.

Note 2: The 0.9 multiplying factor on the allowable emissions side of the inequality is used to assure that sources using the averaging approach demonstrate that their emissions are no greater than ninety percent (90%) of what they would be if they were using compliant coatings.

For Inequalities (1) and (2), the facility must use the actual VOC content of the finishing materials used prior to the effective date of this rule if the VOC content is less than the allowable VOC content. For example, if the affected source was using topcoats with a VOC content of 1.7 kilograms of VOC per kilogram of solids (1.7 pounds of VOC per pound of solids) before being subject to this rule, the affected source must use that value in Inequality (2) rather than 1.8.

3. As an alternate to the finish operation requirements of subparagraph (3)(A)1.A. or part (3)(A)1.B.(II) of this rule, the owner or operator of an affected source may use a control system that will achieve an equivalent reduction in emissions as demonstrated using the compliance requirements of subparagraph (3)(C)1.B. of this rule.

4. As an alternate to the finish operation requirements of paragraphs (3)(A)1. and (3)(A)2. of this rule, the owner or operator of an affected source may use a combination of the methods presented in paragraphs (3)(A)1., (3)(A)2. and (3)(A)3. of this rule as demonstrated using the compliance requirements of subparagraph (3)(C)1.C. of this rule.

5. The owner or operator of an affected source shall limit VOC emissions from cleaning operations when using a strippable booth coating. The VOC contents shall be no more than shown in Table 6.

**Table 6**

	kg VOC/kg solids (as applied)	lb VOC/lb solids (as applied)
Strippable booth coating	0.8	0.8

#### (C) Compliance Procedures and Monitoring Requirements.

1. The owner or operator of an affected source subject to the emission standards in subsection (3)(A) of this rule shall demonstrate compliance with those requirements by using one of the following methods:

A. To demonstrate that each sealer, topcoat and strippable booth coating meets the applicable requirements of paragraphs (3)(A)1. and (3)(A)5. of this rule, the owner or operator shall maintain certified product data sheets for each of these finishing materials. If solvent or other VOC is added to the finishing material before application, the owner or operator shall maintain documentation showing the VOC content of the finishing material as applied, in kg VOC/kg solids (lb VOC/lb solids); or

B. To demonstrate compliance through the use of a control system per paragraph (3)(A)3. of this rule, the owner or operator shall—

(I) Determine the overall control efficiency needed to demonstrate compliance using Equation (3) as follows;

$$R = [(C - E)/C] \times 100 \quad (3)$$

where:

- R = the overall efficiency of the control system, expressed as a percentage;
- C = the VOC content of a coating (C), in kilograms of VOC per kilogram of coating solids (kg VOC/kg solids), as applied. Also given in pounds of VOC per pound of coating solids (lb VOC/lb solids), as applied; and
- E = the emission limit achieved by the affected emission point(s), in kg VOC/kg solids;

(II) Document that the value of C in Equation (3) is obtained from the VOC and solids content of the as-applied finishing material; and

(III) Calculate the overall efficiency of the control device, using the procedure in subsection (5)(D) of this rule, and demonstrate that the value of the overall efficiency of the control system, expressed as a percentage, is equal to or greater than the value of R calculated by Equation (3).

C. To demonstrate compliance through the use of a combination of the methods per paragraph (3)(A)4. of this rule, the owner or operator shall meet all individual compliance requirements for the applicable methods being combined.

2. Initial compliance.

A. The owner or operator of an affected source subject to a requirement of paragraph (3)(A)1. or (3)(A)5. of this rule that is complying through the method established in subparagraph (3)(C)1.A. of this rule, shall submit an initial compliance status report, as required by paragraph (4)(A)2. of this rule, stating that compliant sealers and/or topcoats and strippable booth coatings are being used by the affected source.

B. The owner or operator of an affected source subject to a requirement of paragraph (3)(A)1. of this rule that is complying through the method established in subparagraph (3)(C)1.A. of this rule and is applying sealers and/or topcoats using continuous coaters shall demonstrate initial compliance by—

(I) Submitting an initial compliance status report stating that compliant sealers and/or topcoats, as determined by the VOC content of the finishing material in the reservoir and the VOC content as calculated from records, are being used; or

(II) Submitting an initial compliance status report stating that compliant sealers and/or topcoats, as determined by the VOC content of the finishing material in the reservoir, are being used and the viscosity of the finishing material in the reservoir is being monitored. The affected source shall also provide data that demonstrates the correlation between the viscosity of the finishing material and the VOC content of the finishing material in the reservoir.

C. The owner or operator of an affected source demonstrating compliance with this rule through the use of a control system (capture device/control device) per paragraph (3)(A)3. and subparagraph (3)(C)1.B. of this rule, shall demonstrate initial compliance by—

(I) Submitting a monitoring plan that identifies the operating parameter to be monitored for the capture device and discusses why the parameter is appropriate for demonstrating ongoing compliance;

(II) Conducting an initial performance test using the procedures and test methods listed in subsections (5)(C) and (5)(D) of this rule (test methods in paragraphs (5)(C)3., (5)(C)4. and (5)(C)5. of this rule shall be performed, as applicable, at least twice during each test period);

(III) Calculating the overall control efficiency using the procedure in subsection (5)(D) of this rule;

(IV) Determining those operating conditions critical to determining compliance and establishing operating parameters that will ensure compliance with the standard as follows:

(a) For compliance with a thermal incinerator, minimum combustion temperature shall be the operating parameter;

(b) For compliance with a catalytic incinerator equipped with a fixed catalyst bed, the minimum gas temperature both upstream and downstream of the catalyst bed shall be the operating parameter;

(c) For compliance with a catalytic incinerator equipped with a fluidized catalyst bed, the minimum gas temperature upstream of the catalyst bed and the pressure drop across the catalyst bed shall be the operating parameters; and

(d) For compliance with a carbon adsorber, the operating parameters shall be either the total regeneration mass stream flow for each regeneration cycle and the carbon bed temperature after each regeneration, or the concentration level of organic compounds exiting the adsorber, unless the owner or operator requests and receives approval from the director to establish other operating parameters; and

(V) The owner or operator of an affected source demonstrating compliance with this rule per subparagraph (3)(C)2.C. of this rule shall calculate the site-specific operating parameter value as the arithmetic average of the maximum or minimum operating parameter values, as appropriate, that demonstrate compliance with the standards, during the three (3) test runs required by paragraph (5)(C)1. of this rule.

D. The owner or operator of an affected source subject to the work practice standards in subsection (3)(B) of this rule shall submit an initial compliance status report, as required by paragraph (4)(A)3. of this rule, stating that the work practice implementation plan has been developed and procedures have been established for implementing the provisions of the plan.

(D) Special Requirements for Sources Using An Averaging Approach. The owner or operator of an affected source complying with the emission limitations in subsection (3)(A) of this rule through the procedures established in paragraph (3)(A)2. of this rule shall also meet the following requirements:

1. Program goals and rationale. The owner or operator of the affected source shall provide a summary of the reasons why the affected source would like to comply with the emission limitations through the procedures established in paragraph (3)(A)2. of this rule and a summary of how averaging can be used to meet the emission limitations. The affected source shall also document that the additional environmental benefit requirement is being met through the use of the inequalities in paragraph (3)(A)2. of this rule. These inequalities ensure that the affected source is achieving an additional ten percent (10%) reduction in emissions when compared to affected sources using a compliant coatings approach to meet the requirements of the rule.

2. Program scope. The owner or operator of the affected source shall describe the types of finishing materials that will be included in the affected source's averaging program. Stains, basecoats, washcoats, sealers and topcoats may all be used in the averaging program. Finishing materials that are applied using continuous coaters may only be used in an averaging program if the affected source can determine the amount of finishing material used each day.

3. Program baseline. The baseline for each finishing material included in the averaging program shall be the lower of the actual or allowable emission rate as of the effective date of this rule.

4. Quantification procedures. The owner or operator of the affected source shall specify methods and procedures for quantifying emissions. Quantification procedures for VOC content are included in section (5) of this rule. The owner or operator shall specify methods to be used for determining the usage of each finishing material. The quantification methods used shall be accurate enough to ensure that the affected source's actual emissions are less than the allowable emissions, as calculated using Inequality (1) or (2) in paragraph (3)(A)2. of this rule, on a daily basis to a level of certainty comparable to that for traditional control strategies applicable to surface coating sources.

5. Monitoring, record keeping and reporting. The owner or operator of an affected source shall provide a summary of the monitoring, record keeping and reporting procedures that will be used to demonstrate daily compliance with the inequalities presented in paragraph (3)(A)2. of the rule. The monitoring, record keeping and reporting procedures shall be structured in such a way that inspectors and facility owners can determine an affected source's compliance status for any day. Furthermore, the procedures must include methods for determining required data when monitoring, record keeping and reporting violations result in missing, inadequate or erroneous monitoring and record keeping. These procedures must ensure that sources have sufficiently strong incentive to properly perform monitoring and record keeping.

6. Implementation schedule. The owner or operator of an affected source shall submit an averaging proposal for state and EPA approval by July 31, 2001.

7. Administrative procedures. Any affected source may submit an averaging approach proposal to the director for consideration in meeting the compliance requirements of this rule. The director shall take the following actions:

A. Determine whether or not the proposal submittal is complete and notify the submitter of the completeness status within thirty (30) calendar days of receipt of the proposal; and

B. Approve or disapprove the proposal within thirty (30) calendar days of determining that a proposal submittal is complete.

(5) Test Methods.

(C) Owners or operators using a control system shall demonstrate initial compliance using the procedures in paragraphs (5)(C) 1. through (5)(C)5. of this rule.

1. The VOC concentration of gaseous air streams shall be determined with a test consisting of three (3) separate runs, each lasting a minimum of thirty (30) minutes using one (1) of the following methods as specified by 40 CFR 60, Appendix A—Reference Methods:

A. *Method 18—Measurement of Gaseous Organic Compound Emissions by Gas Chromatography;*

B. 10 CSR 10-6.030(14)(A), Reference Method 25—Determination of Total Gaseous Nonmethane Organic Emissions as Carbon; or

C. *Method 25A—Determination of Total Gaseous Organic Concentration Using Flame Ionization Analyzer.*

2. Sample and velocity traverses shall be determined by using one (1) of the following methods as specified by 40 CFR 60, Appendix A—Reference Methods:

A. 10 CSR 10-6.030(1), Reference Method 1—Sample and Velocity Traverses for Stationary Sources; or

B. *Method 1A—Sample and Velocity Traverses for Stationary Sources with Small Stacks or Ducts.*

3. Velocity and volumetric flow rates shall be determined by using one (1) of the following methods as specified by 40 CFR 60, Appendix A—Reference Methods:

A. 10 CSR 10-6.030(2), Reference Method 2—Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube); or

B. *Method 2A—Direct Measurement of Gas Volume Through Pipes and Small Ducts;*

C. *Method 2C—Determination of Stack Gas Velocity and Volumetric Flow Rate in Small Stacks or Ducts (Standard Pitot Tube);*

D. *Method 2D—Measurement of Gas Volumetric Flow Rates in Small Pipes and Ducts;*

E. *Method 2F—Determination of Stack Gas Velocity and Volumetric Flow Rate With Three-Dimensional Probes;*

F. *Method 2G—Determination of Stack Gas Velocity and Volumetric Flow Rate With Two-Dimensional Probes;* or

G. *Method 2H—Determination of Stack Gas Velocity Taking Into Account Velocity Decay Near the Stack Wall.*

4. To analyze the exhaust gases, use 10 CSR 10-6.030(3), Reference Method 3—Gas Analysis for Carbon Dioxide, Oxygen, Excess Air and Dry Molecular Weight.

5. To measure the moisture in the stack gas, use 10 CSR 10-6.030(4), Reference Method 4—Determination of Moisture Content in Stack Gases.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**

**Division 10—Air Conservation Commission**

**Chapter 5—Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 1999, the commission adopts a rule as follows:

10 CSR 10-5.540 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg (2034-2040). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The department received the following comments. The department's response follows each comment. Most of the comments received generally supported the proposed rule, but stressed the need for clarification of various applicability and technical issues.

**COMMENT:** U.S. Environmental Protection Agency (EPA) commented the averaging time (for example daily, monthly or annual) should be included in subsections (3)(A) and (3)(B) with respect to the overall efficiency requirements for reducing uncontrolled VOC emissions.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees. Subsections (3)(A) and (3)(B) have been changed to include an annual averaging time with respect to the overall efficiency requirements. The annual averaging time was selected because the number of batches of many products produced by batch process operations, in practice, are limited to one or two batches each year.

**COMMENT:** EPA commented subsection (3)(C) should define what happens when control equipment installed prior to December 15, 1999, does not meet 81 percent control efficiency. EPA recommended sources be required to install controls prior to the December 31, 2003 deadline. The Regulatory Environmental Group for Missouri (REGFORM) commented the proposed rule lacks a compliance date and recommended the rule be amended to establish a compliance date of May 1, 2002, as in the proposed NO<sub>x</sub> RACT rule.

**RESPONSE AND EXPLANATION OF CHANGE:** The department maintains the rule includes compliance dates. As suggested, the compliance dates have been changed to May 1, 2002. In addition, subsection (3)(C) has been revised to include a compliance date for control equipment installed prior to December 15, 1999, that does not meet 81 percent control efficiency.

**COMMENT:** EPA commented subsection (3)(C) should include performance criteria language to define the indicators to be used to demonstrate compliance. Alternatively, subsection (3)(B) should reference performance criteria in another subsection(s).

**RESPONSE AND EXPLANATION OF CHANGE:** Subsection (3)(B) has been revised to reference performance criteria included in the revised subsection (3)(D), which includes control equipment specifications referenced in federal New Source Performance Standards requirements for synthetic organic chemical manufacturing industry reactor processes.

**COMMENT:** EPA commented subsection (3)(E) could be misinterpreted to be a permanent exemption (from flare specification requirements) based on a one-time emergency discharge. EPA commented the rule language should be clarified to ensure this is a temporary exemption for only the period of time during the emergency venting discharge.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees. Subsection (3)(E) was relettered as subsection (3)(D) and has been changed accordingly.

**COMMENT:** EPA commented subsection (4)(G) should reference the control requirements of section (3), not of subsection (1)(D).

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees this reference should be corrected and subsection (4)(G) has been changed accordingly.

**COMMENT:** EPA commented that records should be kept on-site for a period of at least five years for consistency with other reasonably available control technology (RACT) rules and with current maximum achievable control technology (MACT) standards requirements.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees consistency is a primary objective. Subsection (4)(H) has been changed accordingly.

**COMMENT:** EPA commented three new (recently added) test methods for measuring flow with abnormal properties should be included in section (5)(F)2. The new methods are included under 40 CFR Part 60, Appendix A as methods 2F, 2G, and 2H.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees. Paragraph (5)(F)2. has been changed to include these three new optional test methods.

**COMMENT:** EPA commented some of the language in paragraph (5)(F)3. is not consistent with the test methods as defined in 40 CFR Part 60, Appendix A and suggested some rule language changes to correct the inconsistencies.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees the suggested rule language is appropriate. Subparagraph (5)(F)3.A. has been changed accordingly.

**COMMENT:** EPA commented the proposed rule language in subparagraphs (5)(F)3.B., (5)(F)3.C. and (5)(F)3.D. for calculating mass emission rate in, mass emission rate out, and the total overall control device efficiency should be revised by suggesting new rule language.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees the suggested rule language is appropriate. Subparagraphs (5)(F)3.B., (5)(F)3.C. and (5)(F)3.D have been changed accordingly.

**COMMENT:** EPA commented the purpose of subsection (5)(I) is unclear and expressed concerns regarding enforceability of this subsection. EPA recommended a revision to either clarify the purpose of this subsection or to remove the subsection from the rule.

**RESPONSE:** The department believes subsection (5)(I) is enforceable and should remain as proposed. Therefore, no changes were made to the rule language.

**COMMENT:** Anheuser-Busch Companies and Solutia Incorporated commented that the applicability language should be changed such that the rule applies only to batch operations that have the potential to emit equal to or greater than one hundred tons per year of volatile organic compounds at sources identified by any one of the seven standard industrial classification codes already listed. Similarly, REGFORM commented the rule should be amended so that the whole rule applies to any facility if the batch operation is a major source, as in subsection (1)(B), and it is on the SIC code list, as in subsection (1)(C).

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees subsections (1)(B) and (1)(C) should be clarified. The department maintains the intent of the Clean Air Act requirements is to, at a minimum, impose RACT on all major volatile organic compound (VOC) stationary sources in moderate ozone nonattainment areas. The department also maintains that since the referenced guidance documents for batch process operations were never finalized by U.S. EPA, the state is not explicitly obligated to omit every regulatory provision not included in the draft guidance. To provide clarity, subsections (1)(B) and (1)(C) have been combined as suggested in the majority of comments received.

**COMMENT:** Solutia Incorporated, the City of St. Louis—Division of Air Pollution Control, and REGFORM commented the terms batch process operations and batch operations are not defined in either the proposed rule or in 10 CSR 10-6.020. The commenters recommended the department include these definitions in the rule. The City of St. Louis requested clarification of the definition for batch process train to specify how this unit should be measured and how many units can be included in one train. REGFORM commented the terms flow rate and annual mass emissions are not defined in the rule and recommended these definitions be added to the rule.

**RESPONSE AND EXPLANATION OF CHANGE:** The department has added a definition for batch process operations in section (2). All references to batch operations have been changed to batch process operations, since they reference the same operations. The definition for batch process train in section (2) has been revised to provide further detail. Definitions for flow rate and annual mass emissions have not been added to the rule since they are self-explanatory and flow rate is defined by the equations in subsection (1)(F).

**COMMENT:** REGFORM commented the definition of air pollution control devices is confusing. REGFORM commented this definition can be read two different ways and should be clarified.

**RESPONSE AND EXPLANATION OF CHANGE:** The department maintains the definition is consistent with federal guidance. In the interest of clarity, the definition of control devices in section (2) has been revised.

**COMMENT:** U.S. Polymers commented the applicability provisions of the rule are confusing and conflicting and requested that two main applicability provisions be clarified. The first question is whether the rule applies to batch process operations that have a potential to emit less than 100 tons of VOC emissions. The second question is whether a unit operation with uncontrolled emissions greater than 500 pounds that is part of a de minimis batch process train is subject to the control requirements of the rule.

The P.D. George Company also commented it is not clear whether a batch operation must meet the criteria of both paragraphs (1)(D)1. and (1)(D)2. of the proposed rule before the batch operation is considered de minimis.

U.S. Polymers further commented that a review of the Alternative Control Technologies Information Document supports the position that controls should not be imposed on individual unit operations that are part of a de minimis batch process train. U.S. Polymers requested that the rule should be clarified to address these issues.

**RESPONSE:** When the fiscal note for the proposed rule was prepared, the department did not include potential sources unless they were defined as a major source. In addition, subsection (1)(B) states the rule is applicable to batch process operations that have the potential to emit equal to or greater than 100 tons per year of VOC emissions.

U.S. EPA guidance documents indicate a batch operation must meet the criteria of both paragraphs (1)(D)1. and (1)(D)2. before the batch operation is considered de minimis. In the case where any single unit operation has uncontrolled total annual mass emissions (UTAME) of greater than 500 lb/yr of VOC, the next step to determine rule applicability is to calculate the flow rate per subsection (1)(F). The department expects that in many cases, the UTAME will be low enough to exempt such single unit operations from the control requirements, even though the single unit operation does not meet the de minimis requirements. Therefore, no changes were made to the rule language.

**COMMENT:** The City of St. Louis—Division of Air Pollution Control commented there is no explanation whether this RACT rule will take precedence over other RACT rules and suggests that a statement such as that found in proposed rule 10 CSR 10-5.550 (1)(C) be included in this rule.

The City of St. Louis further commented it applauds the efforts of the department to track and require control technology for smaller emission units, such as the single unit operations included in this rule.

Similarly, the P.D. George Company and REGFORM commented the applicability section of the rule should be amended to exempt sources that are subject to another RACT rule. P.D. George Company and REGFORM commented the rule should also exempt facilities whose batch process operations are subject to other more stringent state or federal regulations.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees with the City of St. Louis' comments. The department does not agree with the concept of a blanket exemption for sources that are subject to another RACT rule because applicability alone does not necessarily mean emissions controls are required. The department does agree that facilities whose batch process operations are subject to other more stringent state regulations should not also be subject to the requirements of 10 CSR 10-5.540. Thus, a new subsection (1)(F) has been added to the rule to clarify which requirement takes precedence when other rules are applicable to an emission source.

**COMMENT:** Commissioner Foresman asked that when referencing other APCP rules applicable to the same VOC emission source that the source be subject to only the more stringent rule, and not the more stringent requirement of each rule. This would lessen the burden to industry and likely result in better compliance.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees that facilities whose batch process operations are subject to other more stringent state regulations should not also be subject to the requirements of 10 CSR 10-5.540. Thus, the language of subsection (1)(F), which was added in response to another comment, is written to state the more stringent rule in Title 10 Division 10 shall apply.

**COMMENT:** Mallinckrodt Incorporated commented pharmaceutical production is currently subject to the provisions of 10 CSR 10-5.350 Control of Emissions from Manufacture of Synthesized Pharmaceutical Products. Mallinckrodt commented it is unreasonable to subject an emission source to multiple RACT rules. Mallinckrodt further commented the St. Louis plant will be in compliance with the provisions of the final pharmaceutical MACT rule by September 2001. Mallinckrodt estimates the St. Louis plant will spend between 10 million and 15 million dollars on capital expenditures to meet the provisions of the pharmaceutical MACT and the pharmaceutical effluent guidelines.

Mallinckrodt suggested the SIC codes 2833 and 2834 be removed from the applicability section of the rule because 10 CSR 10-5.350 already covers those SIC codes. In addition, Mallinckrodt suggested an exemption for sources who are already subject to a more stringent control requirement, such as New Source Performance Standards (NSPS), Maximum Achievable Control Technology, and National Emission Standards for Hazardous Air Pollutants (NESHAP).

**RESPONSE:** The department assumes NSPS, MACT, and NESHAP requirements are typically more stringent than RACT requirements. In addition, the department agrees facilities subject to more stringent requirements should not also be subject to the requirements of 10 CSR 10-5.540.

The department does not agree SIC codes 2833 and 2834 should be removed from the applicability section because EPA guidance targets, at a minimum, all seven of the SIC codes listed in subsection (1)(C). Subsection (1)(F) addresses the situation when more stringent control requirements are applicable to a batch process operation facility. Therefore, no changes were made to the rule language.

**COMMENT:** The P.D. George Company commented the type of process equipment included in the batch process train should be clarified, and specifically inquired if thinning tanks are included in train equipment. P.D. George Company commented the proposed rule should apply only to those process units that are identified by the seven SIC codes listed in subsection (1)(C) and not to those process units associated with those SIC codes, such as thinning tanks.

**RESPONSE:** The department maintains the revised definition for batch process train clarifies which types of process equipment are included in train equipment and clarifies where the train ends. The department does not agree that the rule should automatically exclude process units that are identified by other SIC codes if such process units are included as part of a batch process train. Therefore, no changes were made to the rule language.

**COMMENT:** REGFORM and the P.D. George Company commented low actual emissions sources should be exempt from the rule, below which a batch process train is exempt from the applicability determination, record keeping and/or reporting. REGFORM commented that some facilities have many small batch process trains and single unit operations and that record keeping requirements for de minimis units/trains is impractical, expensive and disproportionate to the small potential VOC emission reductions that could be realized. REGFORM and the P.D. George Company commented batch process trains that are not likely to exceed 30,000 lbs/yr of actual VOC emissions should be exempt.

**RESPONSE:** The department agrees low actual emissions sources offer the potential for minimal VOC emission reductions. The department continues to investigate the possibility of setting a low actual emission threshold below which a batch process train would be exempt from portions of the proposed batch process operations rule. However, the department has not yet determined an appropriate level for the low actual emission threshold. Therefore, no changes were made to the rule language.

**COMMENT:** REGFORM and the P.D. George Company commented batch process train should be defined as one or more single unit operations, and all references to single unit operations should be deleted to avoid confusion and to add practicality to the rule.

**RESPONSE:** The department disagrees that all references to single unit operations should be deleted from the rule. Removal of references to single unit operations would not be consistent with the EPA's draft control techniques guideline documents for the control of VOC emissions from batch processes. Therefore, no changes were made to the rule language.

COMMENT: REGFORM and the P.D. George Company commented there is a potential to obtain negative numbers from the applicability equations in section (1)(F) and suggested these equations be reviewed to determine their appropriateness. REGFORM repeated its comment that references to single unit operations should be deleted.

RESPONSE: The department recognizes the flow rate equations will result in negative numbers if the UTAME do not meet minimum values (which vary depending on which of the three flow rate equations is used). The department does not intend to address situations where a negative flow rate is obtained from the flow rate equations in subsection (1)(F) when making applicability determinations. The department maintains the applicability equations in section (1)(F) are appropriate. The department disagrees that all references to single unit operations should be deleted from the rule. Therefore, no changes were made to the rule language.

COMMENT: REGFORM commented that some batch process trains consist of single unit operations that do not have discrete vents, making flow measurement difficult. Where process areas are vented together, the flow rate in the room may be several times higher than is needed according to emissions standards. However, for safety reasons, this flow rate is within recommended values.

REGFORM commented the rule should be amended to provide for alternate methods of flow measurement in sections (3)(F)1. and (3)(F)2., subject to department approval. REGFORM also commented the rule should make provisions for alternate methods of control and/or operating practices to account for unit operations that have no practical way to attach a control device.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees flow measurement for single unit operations is difficult in some cases. Subsection (3)(F) was relettered as subsection (3)(E) and a new paragraph (3)(E)4. has been added to allow for alternate methods of flow measurement, subject to department approval, where such measurement is difficult. Alternate methods of control and/or operating practices will be handled on a case-by-case basis through the permitting process for unit operations that have no practical way of attaching an adequate control device.

COMMENT: REGFORM commented that sections (2) and (1)(D)2. appear to be in conflict since section (2) defines trains based on the product produced, while section (1)(D)2. indicates the trains can produce more than one product.

REGFORM and the P.D. George Company commented it is not clear whether the batch process train emissions are considered independently or in the aggregate when determining applicability to the proposed rule. Some companies manufacture hundreds of different products using the same batch process train. Vice versa, a particular product may not always be produced using the same batch process train. REGFORM and the P.D. George Company commented the proposed rule should be clarified to indicate that emissions from a particular product determines applicability and not the particular equipment in which the product is manufactured.

RESPONSE: The department maintains the batch process train emissions are considered independently, not in the aggregate, when determining applicability. The department also agrees that potential emissions from a batch train are tied to the product rather than the manufacturing equipment. However, the potential emissions are based on a number of other factors. When determining rule applicability, all the batch trains are considered independently to determine those with the highest potential VOC emissions. Other factors that need to be considered include how much time it takes to produce one batch of the product, how many batches could be produced in a year, and whether the number of batches produced in one year is limited by permit conditions. The department maintains that section (2) and paragraph (1)(D)2. are consistent with federal guidance. Therefore, no changes were made to the rule language.

COMMENT: REGFORM and the P.D. George Company commented some facilities use condensers operating under reflux conditions as control devices (for example, as part of synthetic resin production processes) to control greater than 95% of VOC emissions from certain processes. REGFORM and the P.D. George Company commented requiring additional controls would put a great financial burden on industry and would achieve only minimal VOC emissions reductions. REGFORM commented condensers which are part of production processes and which meet a certain percent control efficiency should not be required to add on additional control devices. REGFORM recommended the rule should be clarified by changing the definition of control devices.

RESPONSE: The department does not agree the definition of control devices should be changed to include condensers operating under reflux conditions because this revision conflicts with federal guidance on batch process operations. Therefore, no changes were made to the rule language.

COMMENT: The P.D. George Company commented the monitoring requirements of section (4)(I) should be deleted or used as an alternative means of compliance determination.

RESPONSE: The department believes subsection (4)(I) should remain as proposed. The subsection identifies parameters that should be tracked to ensure control equipment is operating correctly. Therefore, no changes were made to the rule language.

#### 10 CSR 10-5.540 Control of Emissions From Batch Process Operations

##### (1) Applicability.

(B) This rule is applicable to all batch process operations that have the potential to emit equal to or greater than one hundred (100) tons per year of volatile organic compounds (VOC) at sources identified by any of the following four (4)-digit standard industrial classification (SIC) codes, as defined in the 1987 edition of the *Federal Standard Industrial Classification Manual*: SIC 2821, 2833, 2834, 2861, 2865, 2869, and 2879.

(C) The following single unit operations and batch process trains are subject to this rule but are considered to be *de minimis* and are, therefore, exempt from the control requirements of section (3) of this rule. However, the record keeping and reporting requirements in section (4) of this rule shall apply to such *de minimis* single unit operations and batch process trains:

1. Within a batch process operation, any single unit operation with uncontrolled total annual mass emissions of less than or equal to five hundred (500) pounds per year (lb/yr) of VOC. Such single unit operations are also excluded from the calculation of the total annual mass emissions for a batch process train. If the uncontrolled total annual mass emissions from such exempt single unit operation exceed five hundred (500) lb/yr of VOC in any subsequent year, the source shall calculate applicability in accordance with subsection (1)(E) of this rule for both the individual single unit operation and the batch process train containing the single unit operation; and

2. Any batch process train containing process vents that have, in the aggregate, uncontrolled total annual mass emissions, as determined in accordance with paragraph (3)(E)1. of this rule, of less than thirty thousand (30,000) lb/yr of VOC for all products manufactured in such batch process train.

(D) The applicability equations in subsection (1)(E) of this rule, which require the calculation of uncontrolled total annual mass emissions and flow rate value, shall be used to determine whether a single unit operation or a batch process train is subject to the control requirements in section (3) of this rule. The applicability equation shall be applied to the following:

1. Any single unit operation with uncontrolled total annual mass emissions that exceed five hundred (500) lb/yr and with a VOC concentration greater than five hundred (500) parts per million by

volume (ppmv). In this individual determination, no applicability analysis shall be performed for any single unit operation with a VOC concentration of less than or equal to five hundred (500) ppmv; and

2. Any batch process train containing process vents which, in the aggregate, have uncontrolled total annual mass emissions of thirty thousand (30,000) lb/yr or more of VOC from all products manufactured in the batch process train. Any single unit operation with uncontrolled total annual mass emissions exceeding five hundred (500) lb/yr, regardless of VOC concentration, shall be included in the aggregate applicability analysis.

(E) Applicability Equations. The applicability equations in this rule subsection are specific to volatility.

1. Weighted average volatility (WAV) shall be calculated as follows:

$$WAV = \frac{\sum_{i=1}^n \frac{[(VP_i) \times (MVOC_i)]}{[(MWVOC_i)]}}{\sum_{i=1}^n \frac{[(MVOC_i)]}{[(MWVOC_i)]}}$$

where:

WAV = weighted average volatility;

MVOC<sub>i</sub> = mass of VOC component i;

MWVOC<sub>i</sub> = molecular weight of VOC component i; and

VP<sub>i</sub> = vapor pressure of VOC component i.

2. For purposes of determining applicability, flow rate values shall be calculated as follows:

A. Low WAV has a vapor pressure less than or equal to seventy-five (75) millimeters of Mercury (mmHg) at twenty degrees Celsius (20°C), and shall use the following equation:

$$FR = [0.07 (UTAME)] - 1,821$$

Where:

FR = Vent stream flow rate, expressed as standard cubic feet per minute (scfm);

UTAME = Uncontrolled total annual mass emissions of VOC, expressed as lb/yr;

B. Moderate WAV has a vapor pressure greater than seventy-five (75) mmHg but less than or equal to one hundred fifty (150) mmHg at twenty degrees Celsius (20°C), and shall use the following equation:

$$FR = [0.031 (UTAME)] - 494$$

C. High WAV has a vapor pressure greater than one hundred fifty (150) mmHg at twenty degrees Celsius (20°C), and shall use the following equation:

$$FR = [0.013 (UTAME)] - 301$$

3. To determine the vapor pressure of VOC, the applicable methods and procedures in section (5) of this rule shall apply.

(F) In the event that other rules in Title 10 Division 10 of the *Code of State Regulations* are also applicable to batch process operations, the more stringent rule shall apply.

(2) Definitions.

(C) Batch process operation—A discontinuous operation in which a discrete quantity or batch of feed is charged into a chemical manufacturing process unit and distilled or reacted, or otherwise used at one time, and may include, but is not limited to, reactors, filters, dryers, distillation columns, extractors, crystallizers, blend tanks, neutralizer tanks, digesters, surge tanks and product separators. After each batch process operation, the equipment is generally emptied before a fresh batch is started.

(D) Batch process train—The collection of equipment (e.g., reactors, filters, dryers, distillation columns, extractors, crystallizers, blend tanks, neutralizer tanks, digesters, surge tanks and product separators) configured to produce a product or intermediate by a batch process operation. A batch process train terminates at the point of storage of the product or intermediate being produced in the batch process train. Irrespective of the product being produced, a batch process train which is independent of other processes shall be considered a single batch process train for purposes of this rule.

(E) Control devices—Air pollution abatement devices. For purposes of this rule, condensers operating under reflux conditions are not considered control devices.

(F) Emission events—Discrete venting episodes that may be associated with a single unit of operation.

(G) Processes—Any equipment within a contiguous area that are connected together during the course of a year where connected is defined as a link between equipment, whether it is physical, such as a pipe, or whether it is next in a series of steps from which material is transferred from one unit operation to another.

(H) Unit operations—Discrete processing steps that occur within distinct equipment that are used to prepare reactants, facilitate reactions, separate and purify products, and recycle materials.

(I) Vent—A point of emission from a unit operation. Typical process vents from batch processes include condenser vents, vacuum pumps, steam ejectors, and atmospheric vents from reactors and other process vessels. Vents also include relief valve discharges. Equipment exhaust systems that discharge from unit operations also would be considered process vents.

(J) Volatility—For purposes of this rule, low volatility materials are defined as those which have a vapor pressure less than or equal to seventy-five (75) mmHg at twenty degrees Celsius (20°C), moderate volatility materials have a vapor pressure greater than seventy-five (75) and less than or equal to one hundred fifty (150) mmHg at twenty degrees Celsius (20°C), and high volatility materials have a vapor pressure greater than one hundred fifty (150) mmHg at twenty degrees Celsius (20°C). To evaluate VOC volatility for single unit operations that service numerous VOCs or for processes handling multiple VOCs, the weighted average volatility can be calculated from knowing the total amount of each VOC used in a year, and the individual component vapor pressure, per the equation in paragraph (1)(E)1. of this rule.

(K) Definitions of certain terms, other than those specified in this rule, may be found in 10 CSR 10-6.020.

(3) General Provisions.

(A) Every owner or operator of a single unit operation with an average flow rate, as determined in accordance with paragraph (3)(E)2. of this rule, below the flow rate value calculated by the applicability equations contained in subsection (1)(E) of this rule, shall reduce uncontrolled VOC emissions from such single unit operation by an overall efficiency, on an annual average, of at least ninety percent (90%), or twenty (20) ppmv, per batch cycle.

(B) Every owner or operator of a batch process train with an average flow rate, as determined in accordance with subparagraph (3)(E)2.B. of this rule, below the flow rate value calculated by the applicability equations contained in subsection (1)(E) of this rule, shall reduce uncontrolled VOC emissions from such batch process train by an overall efficiency, on an annual average, of at least ninety percent (90%), or twenty (20) ppmv, per batch cycle. For purposes of demonstrating compliance with the emission limitations in

this rule section, any control device meeting the criteria in subsection (3)(D) of this rule shall be deemed to achieve a control efficiency of ninety percent (90%), or twenty (20) ppmv, per batch cycle, as applicable.

(C) Notwithstanding subsection (3)(A) or (3)(B) of this rule, any source that has installed on or before December 15, 1999, any control device which is demonstrated to the department's satisfaction to be unable to meet the applicable control requirements of this rule section, a scrubber, or shell and tube condenser using a non-refrigerated cooling media, and such device achieves at least eighty-one percent (81%) control efficiency of VOC emissions, is required to meet the ninety percent (90%) emission limitation or twenty (20) ppmv VOC concentration in subsection (3)(A) or (3)(B) of this rule, as applicable, upon the earlier to occur of the date the device is replaced for any reason, including, but not limited to, normal maintenance, malfunction, accident, and obsolescence, or May 1, 2002. Control devices installed on or before December 15, 1999, that do not achieve at least eighty-one percent (81%) control efficiency of VOC emissions shall comply with the control requirements of subsection (3)(A) or (3)(B) on or before May 1, 2001. A scrubber, shell and tube condenser using a non-refrigerated cooling media, or other control device meeting the criteria of this rule subsection, is considered replaced when—

1. The entire device is replaced; or
2. When either the cost to repair the device or the cost to replace part of the device exceeds fifty percent (50%) of the cost of replacing the entire device with a control device that complies with the ninety percent (90%) emission limitation or twenty (20) ppmv VOC concentration level in subsection (3)(A) of this rule, as applicable.

(D) Control Equipment Specifications.

1. If a boiler or process heater is used to comply with this rule section, the vent stream shall be introduced into the flame zone of the boiler or process heater. The boiler or process heater shall meet the control device requirements for boilers and process heaters included in 40 CFR 60.703, 60.704, and 60.705.

2. If a flare is used to comply with this rule section, it shall comply with the requirements of 40 CFR 60.18, which are hereby incorporated by reference. The flare operation requirements of 40 CFR 60.18 do not apply if a process, not subject to this rule, vents an emergency relief discharge into a common flare header and causes the flare servicing the process subject to this rule to not comply with one or more of the provisions of 40 CFR 60.18. This exemption from flare specification requirements is a temporary exemption lasting only for the period of time during the emergency relief venting discharge.

3. If an afterburner, scrubber, absorber, condenser or adsorber is used to comply with this rule section, such equipment shall meet the control device requirements for this equipment included in 40 CFR 60.703, 60.704, and 60.705.

4. If an incinerator is used to comply with this rule section, the incinerator shall meet the control device requirements for incinerators included in 40 CFR 60.703, 60.704, and 60.705.

(E) Determination of uncontrolled total annual mass emissions and actual weighted average flow rate values for batch process operations.

1. Uncontrolled total annual mass emissions shall be determined by the following methods:

A. Direct process vent emissions measurements taken prior to any release to the atmosphere, following any recovery device and prior to any control device, provided such measurements conform with the requirements of measuring the mass flow rate of VOC incoming to the control device as in paragraph (5)(F)2. and subparagraphs (5)(F)3.A. and (5)(F)3.B. of this rule; or

B. Engineering estimates of the uncontrolled VOC emissions from a process vent or process vents, in the aggregate, within a batch process train, using either the potential or permitted number of batch cycles per year or total production as represented in the source's operating permit.

(I) Engineering estimates of the uncontrolled VOC emissions shall be based upon accepted chemical engineering principles, measurable process parameters, or physical or chemical laws and their properties. Examples of methods include, but are not limited to, the following:

- (a) Use of material balances based on process stoichiometry to estimate maximum VOC concentrations;
- (b) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities; and
- (c) Estimation of VOC concentrations based on saturation conditions.

(II) All data, assumptions and procedures used in any engineering estimate shall be documented.

2. Average flow rate shall be determined by any of the following methods:

A. Direct process vent flow rate measurements taken prior to any release to the atmosphere, following any recovery device and prior to any control device, provided such measurements conform with the requirements of measuring incoming volumetric flow rate in paragraph (5)(F)2. of this rule;

B. Average flow rate for a single unit operation having multiple emission events or batch process trains shall be the weighted average flow rate, calculated as follows:

$$WAF = \frac{\sum_{i=1}^n (AFR_i \times ADE_i)}{\sum_{i=1}^n (ADE_i)}$$

where:

WAF = Actual weighted average flow rate for a single unit operation or batch process train;

$AFR_i$  = Average flow rate per emission event;

$ADE_i$  = Annual duration of emission event; and

$n$  = Number of emission events.

For purposes of this formula, the term "emission event" shall be defined as a discrete period of venting that is associated with a single unit operation. For example, a displacement of vapor resulting from the charging of a single unit operation with VOC will result in a discrete emission event that will last through the duration of the charge and will have an average flow rate equal to the rate of the charge. The expulsion of expanded vapor space when the single unit operation is heated is also an emission event. Both of these examples of emission events and others may occur in the same single unit operation during the course of the batch cycle. If the flow rate measurement for any emission event is zero, according to paragraph (5)(F)2. of this rule, then such event is not an emission event for purposes of this rule section; or

C. Engineering estimates calculated in accordance with the requirements in subparagraph (3)(E)1.B. of this rule.

3. For purposes of determining the average flow rate for steam vacuuming systems, the steam flow shall be included in the average flow rate calculation.

4. In cases where two (2) or more single unit operations share a process vent and where flow measurement for such single unit operations is difficult, alternate methods of flow measurement may be used only when approved by the department.

(4) Reporting and Record Keeping.

(A) Every owner or operator of a *de minimis* single unit operation or batch process train exempt under paragraph (1)(C)1. or (1)(C)2. of this rule shall keep records of the uncontrolled total

annual mass emissions for any *de minimis* single unit operation or batch process train, as applicable, and documentation verifying these values or measurements. The documentation shall include the engineering calculations, any measurements made in accordance with section (5) of this rule, and the potential or permitted number of batch cycles per year, or, in the alternative, total production as represented in the source's operating permit.

(B) Every owner or operator of a single unit operation exempt under subsection (1)(D) of this rule shall keep the following records:

1. The uncontrolled total annual mass emissions and documentation verifying these values or measurements. The documentation shall include any engineering calculations, any measurements made in accordance with section (5) of this rule, and the potential or permitted number of batch cycles per year or, in the alternative, total production as represented in the source's operating permit; and

2. The average flow rate in standard cubic feet per minute (scfm) and documentation verifying this value.

(C) Every owner or operator of a batch process operation subject to the control requirements of section (3) of this rule shall keep records of the following parameters required to be monitored under subsection (4)(I) of this rule:

1. If using a thermal or catalytic afterburner to comply with section (3) of this rule, records indicating the average combustion chamber temperature of the afterburner or the average temperature upstream and downstream of the catalyst bed for a catalytic afterburner, measured continuously and averaged over the same time period as the performance test;

2. If using a flare to comply with section (3) of this rule, continuous records of the flare pilot flame monitoring and records of all periods of operations during which the pilot flame is absent; or

3. If using any of the following as a control device, the following records:

- A. Where a scrubber is used, the exit specific gravity or alternative parameter which is a measure of the degree of absorbing liquid saturation, if approved by the department, and the average exit temperature of the absorbing liquid, measured continuously and averaged over the same time period as the performance test both measured while the vent stream is routed normally;

- B. Where a condenser is used, the average exit or product side temperature measured continuously and averaged over the same time period as the performance test while the vent stream is routed normally;

- C. Where a carbon adsorber is used, the total steam mass flow measured continuously and averaged over the same time period as the performance test full carbon bed cycle, temperature of the carbon bed after regeneration and within fifteen (15) minutes after completion of any cooling cycle(s), and duration of the carbon bed steaming cycle all measured while the vent stream is routed normally; or

- D. As an alternative to subparagraphs (4)(C)3.A., (4)(C)3.B. or (4)(C)3.C. of this rule, at a minimum, records indicating the concentration level or reading indicated by the VOC monitoring device at the outlet of the scrubber, condenser or carbon adsorber, measured continuously and averaged over the same time period as the performance test while the vent stream is routed normally.

(E) An owner or operator of a batch process operation subject to the control requirements of section (3) of this rule may maintain alternative records other than those listed in subsection (4)(C) of this rule. Any alternative record keeping shall be approved by the department and shall be contained in the source's operating permit as federally enforceable permit conditions.

(F) Notwithstanding subsections (4)(A) through (4)(E) of this rule, any owner or operator of a batch process operation which uses either a scrubber, shell and tube condenser using nonrefrigerated cooling media, or other control device meeting the criteria

of subsection (3)(D) of this rule, is required to monitor compliance with the requirements on and after the earlier to occur of the date such device is replaced for any reason or May 1, 2002.

(G) The owner or operator of a *de minimis* single unit operation or batch process train exempt from the control requirements of section (3) of this rule shall notify the department in writing if the uncontrolled total annual mass emissions from such *de minimis* single unit operation or batch process train exceed the threshold in paragraph (1)(C)1. or (1)(C)2. of this rule, respectively, within sixty (60) days after the event occurs. Such notification shall include a copy of all records of such event.

(H) Every owner or operator of a batch process operation required to keep records under this rule section shall maintain such records on-site for at least five (5) years and shall make all such records available to the department immediately upon request.

(I) Monitoring Requirements.

1. Every owner or operator using an afterburner to comply with section (3) of this rule shall install, calibrate, maintain and operate, according to manufacturer's specifications, temperature monitoring devices with an accuracy of plus or minus one percent ( $\pm 1\%$ ) of the temperature being measured expressed in degrees Celsius, equipped with continuous recorders.

- A. Where a catalytic afterburner is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

- B. Where an afterburner other than a catalytic afterburner is used, a temperature monitoring device shall be installed in the combustion chamber.

2. Every owner or operator using a flare to comply with section (3) of this rule, shall install, calibrate, maintain and operate, according to manufacturer's specifications, a heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light to indicate continuous presence of a flame.

3. Every owner or operator using a scrubber to comply with section (3) of this rule shall install, calibrate, maintain, and operate, according to manufacturer's specifications, the following:

- A. A temperature monitoring device for scrubbant liquid having an accuracy of plus or minus one percent ( $\pm 1\%$ ) of the temperature being monitored expressed in degrees Celsius and a specific gravity device for scrubbant liquid, each equipped with a continuous recorder; or

- B. A VOC monitoring device used to indicate the concentration of VOC exiting the control device based on a detection principle such as infrared, photoionization or thermal conductivity, each equipped with a continuous recorder.

4. Every owner or operator using a condenser to comply with section (3) of this rule shall install, calibrate, maintain, and operate, according to manufacturer's specifications, the following:

- A. A condenser exit temperature monitoring device equipped with a continuous recorder and having an accuracy of one percent ( $\pm 1\%$ ) of the temperature being monitored expressed in degrees Celsius; or

- B. A VOC monitoring device used to indicate the concentration of VOC such as infrared, photoionization or thermal conductivity, each equipped with a continuous recorder.

5. Every owner or operator using a carbon adsorber to comply with this rule shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, the following equipment:

- A. An integrating regeneration stream flow monitoring device having an accuracy of plus or minus ten percent ( $\pm 10\%$ ), and a carbon bed temperature monitoring device having an accuracy of plus or minus one percent ( $\pm 1\%$ ) of the temperature being monitored expressed in degrees Celsius, both equipped with a continuous recorder; or

B. A VOC monitoring device used to indicate the concentration level of VOC exiting such device based on a detection principle such as infrared, photoionization or thermal conductivity, each equipped with a continuous recorder.

6. Every owner or operator using a boiler or process heater with a design heat input capacity less than forty-four (44) megawatts to comply with section (3) of this rule shall install, calibrate, maintain, and operate, according to the manufacturer's specifications, a temperature monitoring device in the firebox with an accuracy of plus or minus one percent ( $\pm 1\%$ ) of the temperature being measured expressed in degrees Celsius, equipped with a continuous recorder. Any boiler or process heater in which all process vent streams are introduced with primary fuel is exempt from this requirement.

7. The owner or operator of a process vent shall be permitted to monitor by an alternative method or may monitor parameters other than those listed in paragraphs (4)(I)1. through (4)(I)6. of this rule, if approved by the department. Such alternative method or parameters shall be contained in the source's operating permit as federally enforceable permit conditions.

8. Notwithstanding paragraphs (4)(I)1. through (4)(I)7. of this rule, sources using a scrubber, shell and tube condenser using a nonrefrigerated cooling media, or other control device meeting the criteria of subsection (3)(D) of this rule, are required to monitor compliance with the requirements of this rule on and after the earlier to occur of the date such device is replaced for any reason or May 1, 2002.

#### (5) Test Methods.

(A) Upon the department's request, the owner or operator of a batch process operation shall conduct testing to demonstrate compliance with section (3) of this rule. The owner or operator shall, at its own expense, conduct such tests in accordance with the applicable test methods and procedures specified in subsections (5)(D), (5)(E), and (5)(F) of this rule.

(D) The owner or operator of a batch process operation that is exempt from the control requirements of section (3) of this rule shall demonstrate, upon the department's request, the absence of oversized gas moving equipment in any manifold. Gas moving equipment shall be considered oversized if it exceeds the maximum requirements of the exhaust flow rate by more than thirty percent (30%).

(E) For the purpose of demonstrating compliance with the control requirements in section (3) of this rule, the batch process operation shall be run at representative operating conditions and flow rates during any performance test.

(F) The following methods in 40 CFR 60, Appendix A, which are hereby incorporated by reference, shall be used to demonstrate compliance with the reduction efficiency requirement in section (3) of this rule:

1. Method 1 or 1A, as appropriate, for selection of the sampling sites if the flow measuring device is not a rotameter. The control device inlet sampling site for determination of vent stream VOC composition reduction efficiency shall be prior to the control device and after the control device;

2. Method 2, 2A, 2C, 2D, 2F, 2G or 2H as appropriate, for determination of gas stream volumetric flow rate flow measurements, which shall be taken continuously. No traverse is necessary when the flow measuring device is an ultrasonic probe; and

3. Method 25A or Method 18, if applicable, to determine the concentration of VOC in the control device inlet and outlet, where—

A. The sampling time for each run shall be as follows:

(I) For batch cycles less than eight (8) hours in length, appropriate operating parameters shall be recorded at a minimum of fifteen (15)-minute intervals during the batched period;

(II) For batch cycles of eight (8) hours and greater in length, the owner or operator may either test in accordance with the test procedures defined in part (5)(F)3.A.(I) of this rule or the owner or operator may elect to perform tests, pursuant to either Method 25A or Method 18, only during those portions of each

emission event which profiles a representative sample occurring within the batch cycle. For each emission event of less than four (4) hours in duration, the owner or operator shall test continuously over the entire emission event as in part (5)(F)3.A.(I) of this rule. For each emission event of greater than four (4) hours in duration, the owner or operator shall elect either to perform a minimum of three (3) one-hour test runs during the emission event or shall test continuously over the entire emission event within each single unit operation in the batch process train. The owner or operator shall define the total batch process by all its intrinsic emission events. To demonstrate that the portion of the emission event to be tested profiles a representative sample occurring within the batch cycle, the owner or operator electing to rely on this option shall develop an emission profile for each entire emission event. Such emission profile shall be based upon either process knowledge or test data collected. Examples of information that could constitute process knowledge include, but are not limited to, calculations based on material balances, duration, emission levels, constituents, reactants, byproducts and process stoichiometry. Previous test results may be used provided such results are still relevant to the current process vent stream conditions; or

(III) For purposes of paragraph (5)(F)3. of this rule, the term "emission event" shall be defined as a discrete period of venting that is associated with a single unit operation. For example, a displacement of vapor resulting from the charging of a single unit operation with VOC will result in a discrete emission event that will last through the duration of the charge and will have an average flow rate equal to the rate of the charge. The expulsion of expanded single unit operation vapor space when the vessel is heated is also an emission event. Both of these examples of emission events and others may occur in the same single unit operation during the course of the batch cycle. If the flow rate measurement for any emission event is zero (0), in accordance with paragraph (5)(F)2. of this rule, then such event is not an emission event for purposes of this rule section;

B. Calculate the mass emission rate ( $MER_i$ ) into the control device as follows:

$$MER_i = C_i Q_i$$

where:

$C_i$  = concentration into the control device;

and

$Q_i$  = flow rate into the control device;

C. Calculate the mass emission rate ( $MER_o$ ) out of the control device as follows:

$$MER_o = C_o Q_o$$

where:

$C_o$  = concentration out of the control device;

and

$Q_o$  = flow rate out of the control device; and

D. Calculate the total overall control device efficiency ( $\eta$ ) as follows:

$$\eta = (MER_i - MER_o)/MER_i$$

(G) Upon request by the department to conduct testing, an owner or operator of a batch process operation which has installed a scrubber, a shell and tube condenser using a nonrefrigerated cooling media, or any other control device which meets the criteria of subsection (3)(D) of this rule, shall demonstrate that such device achieves the control efficiency applicable within section (3) of this rule upon the earlier to occur of the date the device is replaced or May 1, 2002.

(H) The owner or operator of a batch process operation may propose an alternative test method or procedures to demonstrate compliance with the control requirements in section (3) of this rule. Such method or procedures shall be approved by the department.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 10—Air Conservation Commission**  
**Chapter 5—Air Quality Standards and Air Pollution**  
**Control Rules Specific to the St. Louis Metropolitan**  
**Area**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo Supp. 1999, the commission adopts a rule as follows:

10 CSR 10-5.550 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2041-2048). Those sections with changes are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENT:** The department received seven (7) comments from three (3) entities concerning the proposed rule. Key comments were on applicability and reporting and record keeping. The comments and the department's associated response are presented below.

**COMMENT:** The U.S. Environmental Protection Agency (EPA) commented that as written, section (1), Applicability, states that any vent from a process unit in which a reactor or distillation operation is located, is included in this rule. This could potentially include facilities such as dry cleaners or vapor degreasers, which utilize distillation operations. The applicability should be more specific by identifying in the exemption section the type of sources to which this rule will not apply.

**RESPONSE:** Terms used in subsection (1)(A) and their definitions, found in section (2), are adequate to define what sources are subject to this rule. Specifically, the terms process unit and product clearly describe what chemicals are of interest and what is done with those chemicals. Facilities that utilize distillation operations would not be subject to this rule unless they also sold the product or used the product as an intermediary in the production of other chemicals or compounds also for sale. No change was made to the rule as a result of this comment.

**COMMENT:** The EPA commented that in Subsection (1)(C), accurate should be changed to representative.

**RESPONSE:** The department agrees to make this wording change, however subsection (1)(C) is being amended in response to another comment and the text will change. No change was made to the rule as a result of this comment.

**COMMENT:** The EPA commented section (4) does not define how long the records should be kept. Current maximum achievable control technology (MACT) standards require that records be kept for at least five years. We recommend for consistency that all of the reasonably available control technology (RACT) rules read similar to the 5.520 rule, in that all reports and records must be kept on-site for at least five (5) years and made available to the department upon request.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees that it should define how long the records should be kept. To maintain consistency with other RACT rules this rule will require reports and records to be kept for five (5) years. A new subsection (4)(E) has been added to define the length of record keeping. A change was made to the rule as a result of this comment.

**COMMENT:** The EPA commented subsection (4)(B) references the exceedance reporting requirements in a document which is

apparently the U.S. Environmental Protection Agency's (EPA) draft Enhanced Monitoring Guideline. The EPA has no current plans to finalize the document. Therefore, Missouri may wish to take the referenced reporting requirements from the draft and insert them in the rule. The requirements could be modified by subsequent rule revisions, if necessary.

**RESPONSE AND EXPLANATION OF CHANGE:** Based on EPA's comment that the Enhance Monitoring Guideline will not be finalized the department has decided to remove subsection (4)(B) from the proposed rule. A change was made to the rule as a result of this comment.

**COMMENT:** The City of St. Louis, Division of Air Pollution Control requested clarification on how the results of the Total Resource Effectiveness (TRE) index should be measured and checked by the agencies. We feel that the engineering variables used to generate this index can be extremely subjective, dependent on who will perform the calculations.

**RESPONSE:** The variables in the TRE index equation are the stream characteristics: flow rate, heat content, and volatile organic compound (VOC) emission rate. When engineering assessment is used in calculating the TRE value, as described in (3)(B)1.C., there shall be documentation of all data, assumptions, and procedures. Therefore, no changes were made to the rule language.

**COMMENT:** It was indicated that the Department of Natural Resources considered that this proposed rule would potentially apply to the P. D. George Company. The company is exempt from the proposed rule, however, because its reactor processes are designed and operated in a batch mode to manufacture polymers. Even though this proposed rule does not apply to the company's processes, it is suggested that the applicability section of this rule be modified to state that the rule applies to installations that have the potential to emit 100 tons per year or more of VOCs.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees to amend the fiscal note accordingly to reflect one less potential source being affected by this rule. A change was made to the rule as a result of this comment.

**COMMENT:** Commissioner Foresman asked that when referencing other APCP rules applicable to the same VOC emission source that the source be subject only to the more stringent rule, and not the more stringent requirement of each rule. This would lessen the burden to industry and likely result in better compliance.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees to change subsection (1)(C) that contains rule text on multiple rule applicability. A change was made to the rule as a result of this comment.

**10 CSR 10-5.550 Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry**

(1) Applicability.

(B) Exemptions from the provisions of this rule are as follows:

1. Any reactor process or distillation operation that is designed and operated in a batch mode is not subject to the provisions of this rule;

2. Any reactor process or distillation operation that is part of a polymer manufacturing operation is not subject to the provisions of this rule;

3. Any reactor process or distillation operation operating in a process unit with a total design capacity of less than one (1) gigagram (1,100 tons) per year for all chemicals produced within that unit is not subject to the provisions of this rule except for the reporting and record keeping requirements listed in subsection (4)(D) of this rule; and

4. Any vent stream for a reactor process or distillation operation with a flow rate less than 0.0085 standard cubic meter per minute or a total volatile organic compound (VOC) concentration less than five hundred (500) parts per million by volume is not subject to the provisions of this rule except for the performance testing requirement listed in subparagraph (3)(B)3.B., paragraph (3)(B)9. and the reporting and record keeping requirements listed in subsection (4)(C) of this rule.

(C) In the event that other rules in Title 10 Division 10 of the *Code of State Regulations* are also applicable to reactor processes and distillation operation processes in the chemical manufacturing industry, the more stringent rule shall apply.

(2) Definitions.

(R) Total organic compounds or "TOC"—Those compounds measured according to the procedures of Method 18 of 40 CFR part 60, Appendix A. For the purposes of measuring molar compositions as required in subparagraph (3)(B)3.D.; hourly emissions rate as required in subparagraph (3)(B)5.D. and paragraph (3)(B)2.; and TOC concentration as required in paragraph (4)(A)4. The definition of TOC excluded those compounds that the administrator designates as having negligible photochemical reactivity. The administrator has designated the following organic compounds negligibly reactive: methane; ethane; 1,1,1-trichloroethane; methylene chloride; trichlorofluoromethane; dichlorodifluoromethane; chlorodifluoromethane; trifluoromethane; trichlorotrifluoroethane; dichlorotetrafluoroethane; and chloropentafluoroethane.

(4) Reporting and Record Keeping.

(B) Each reactor process or distillation operation seeking to comply with paragraph (3)(A)2. of this rule shall also keep records of the following information:

1. Any changes in production capacity, feedstock type, or catalyst type, or of any replacement, removal, and addition of recovery equipment or reactors and distillation units; and

2. Any recalculation of the flow rate, TOC concentration, or TRE value performed according to paragraph (3)(B)7. of this rule.

(C) Each reactor process or distillation operation seeking to comply with the flow rate or concentration exemption level in paragraph (1)(B)4. of this rule shall keep records to indicate that the stream flow rate is less than 0.0085 standard cubic meters per minute or the concentration is less than five hundred (500) parts per million by volume.

(D) Each reactor process or distillation operation seeking to comply with the production capacity exemption level of one (1) gigagram per year shall keep records of the design production capacity and changes in equipment or process operation that may affect design production capacity to the affected process unity.

(E) All records must be kept on-site for a period of five (5) years and made available to the department upon request.

*REVISED PRIVATE COST: This proposed rule will have a private cost of \$1,368,315 in the aggregate. Note attached fiscal note for assumptions that apply.*

REVISED FISCAL NOTE  
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10 – Department of Natural Resources

Division: 10 – Air Conservation Commission

Chapter: 5 – Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10-5.550 Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the Proposed Rule <sup>1</sup> :	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities <sup>2,3,4,5</sup> :
2 synthetic organic chemical manufacturing industries	reactor and distillation operation processes	\$1,368,315*

\*The estimated cost of compliance in the aggregate is calculated for a period of ten (10) years, which is the expected life of the rule.

III. WORKSHEET

<u>Control Options</u>	<u>Total Capital Investment</u>	<u>Annual Costs</u>
Incinerator	\$86,203	\$63,591 per year
Flare	\$94,502	\$55,170 per year
TOTAL	\$180,705	\$118,761 per year

Ten (10) year cost of compliance = \$180,705 + (\$118,761 per year X 10 years) = \$1,368,315

IV. ASSUMPTIONS

1. A search of the APCP database was conducted using source classification codes (SCC) for manufacturing operations located in the St. Louis metropolitan area that might contain reactor and distillation operation processes. Emission inventory and permit information was used to determine applicability. In addition, letters were sent to all facilities describing the proposed rule. A total of sixty-seven letters were sent out. The responses received back in time to prepare this fiscal note suggest that the number of facilities likely to be subject to this proposed rule is relatively few. Based upon the available information there are two (2) facilities that may be subject to this proposed rule.
2. The control techniques guidelines (CTG) document *Control of Volatile Organic Compound Emissions*

*From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry* (EPA-450/4-91-031) was used in estimating fiscal note cost. Chapter 5 and Appendix C of the CTG contain cost analysis and cost calculation to affected entities. The costs used in the CTG manual are in 1990 dollars and have not been adjusted.

3. The thermal incinerator system consists of the following equipment: combustion chamber, instrumentation, recuperative heat exchanger, blower, collection fan and ductwork, quench/scrubber system (if applicable), and stack. A scrubber system would be required for halogenated volatile organic compounds. The incinerator is designed to have a control efficiency of 98 percent destruction, an incinerator capacity flow rate range of 500 to 50,000 standard cubic feet per minute, an incinerator temperature of 1,600 °F (2,000 °F for halogenated vent streams), and a chamber residence time of 0.75 seconds (1.00 seconds for halogenated vent streams). Total Capital Investment includes the cost of the equipment and installation costs. Annual Costs include direct operating and maintenance costs as well as annualized capital charges. For a complete cost analysis please consult the CTG document.
4. The flare system consists of an elevated, steam-assisted, smokeless flare. This includes a knock-out drum, liquid seal, stack, gas seal, burner tip, pilot burners, and steam jets. The flare is designed to have a control efficiency of 98 percent destruction and a minimum net heating value value of 300 Btu/standard cubic foot of gas being combusted. Natural gas is the supplemental fuel to maintain the vent stream heating value. Total Capital Investment includes the cost of the equipment and installation costs. Annual Costs include direct operating and maintenance costs and annualized capital charges. The Annual Costs were reduced by a factor of ten (10) from what appears in the CTG document due to what appears to be an error in calculating auxiliary gas cost. For a complete cost analysis please consult the CTG document.
5. The cost of compliance for the affected entities is based upon the assumption that an incinerator and a flare control option system will be used. The total annual aggregate cost over the first ten fiscal years is \$136,831.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 43—Investment of Nonstate Funds**

**ORDER OF RULEMAKING**

By the authority vested in the Director of Revenue under section 136.120, RSMo 1994, the director amends a rule as follows:

**12 CSR 10-43.020 Investment Instruments for Nonstate Funds is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2230). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 43—Investment of Nonstate Funds**

**ORDER OF RULEMAKING**

By the authority vested in the Director of Revenue under section 136.120, RSMo 1994, the director amends a rule as follows:

**12 CSR 10-43.030 Collateral Requirements for Nonstate Funds is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2230-2231). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 15—ELECTED OFFICIALS  
Division 30—Secretary of State  
Chapter 45—Records Management**

**ORDER OF RULEMAKING**

By the authority vested in the secretary of state's office under sections 59.319, RSMo 1994 and 109.221, RSMo Supp. 1999, the secretary of state rescinds a rule as follows:

**15 CSR 30-45.030 Local Records Grant Program Administration is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2147). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 15—ELECTED OFFICIALS  
Division 30—Secretary of State  
Chapter 45—Records Management**

**ORDER OF RULEMAKING**

By the authority vested in the secretary of state's office under sections 59.319, RSMo 1994 and 109.221, RSMo Supp. 1999, the secretary of state adopts a rule as follows:

**15 CSR 30-45.030 Local Records Grant Program Administration is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2147-2149). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS  
Division 10—The Public School Retirement System of  
Missouri  
Chapter 4—Creditable Service**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo Supp. 1999, the board hereby amends a rule as follows:

**16 CSR 10-4.010 Membership Service Credit is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2231-2232). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS  
Division 10—The Public School Retirement System of  
Missouri  
Chapter 5—Retirement, Options, and Benefits**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo Supp. 1999, the board hereby amends a rule as follows:

**16 CSR 10-5.010 Service Retirement is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2232-2233). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System of**  
**Missouri**  
**Chapter 5—Retirement, Options, and Benefits**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo Supp. 1999, the board hereby amends a rule as follows:

**16 CSR 10-5.020 Disability Retirement is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2233). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System of**  
**Missouri**  
**Chapter 5—Retirement, Options, and Benefits**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo Supp. 1999, the board hereby amends a rule follows:

**16 CSR 10-5.030 Beneficiary is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2233–2234). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System of**  
**Missouri**  
**Chapter 5—Retirement, Options, and Benefits**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo Supp. 1999, the board hereby amends a rule follows:

**16 CSR 10-5.055 Cost-of-Living Adjustments is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2234–2235). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System of**  
**Missouri**  
**Chapter 6—The Nonteacher School Employee**  
**Retirement System of Missouri**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.610, RSMo 1994, the board hereby amends a rule as follows:

**16 CSR 10-6.040 Membership Service Credit is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2235). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System of**  
**Missouri**  
**Chapter 6—The Nonteacher School Employee**  
**Retirement System of Missouri**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.610, RSMo 1994, the board hereby amends a rule as follows:

**16 CSR 10-6.060 Service Retirement is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2235–2236). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System of**  
**Missouri**  
**Chapter 6—The Nonteacher School Employee**  
**Retirement System of Missouri**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.610, RSMo 1994, the board hereby amends a rule as follows:

**16 CSR 10-6.090 Beneficiary is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2236). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System of**  
**Missouri**  
**Chapter 6—The Nonteacher School Employee**  
**Retirement System of Missouri**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.610, RSMo 1994, the board hereby amends a rule as follows:

**16 CSR 10-6.100** Cost-of-Living Adjustments is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 1999 (24 MoReg 2236-2237). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**T**his section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs and other items required to be published in the *Missouri Register* by law.

**Title 4—DEPARTMENT OF ECONOMIC  
DEVELOPMENT  
Division 100—Division of Credit Unions**

**ACTIONS TAKEN ON APPLICATIONS FOR NEW  
GROUPS OR GEOGRAPHIC AREAS**

Pursuant to section 370.081(4), RSMo Supp. 1999, the Director of the Missouri Division of Credit Unions is required to cause notice to be published that the director has either granted or rejected applications from the following credit unions to add new groups or geographic areas published in the *Missouri Register* November 1, 1999 (24 MoReg 2647) to their membership and state the reasons for taking these actions.

The following applications have been granted. These credit unions have meet the criteria applied to determine if additional groups may be included in the membership of an existing credit union and have the immediate ability to serve the proposed new groups or geographic areas. The proposed new groups or geographic areas meet the requirements established pursuant to 370.080(2), RSMo Supp. 1999.

<u>Credit Union</u>	<u>Proposed New Group or Area</u>
Catholic Family Credit Union 222 West 85th Street Kansas City, MO 64114	Staff, school, and family members of St. Louis Catholic Church
	Staff, school, and family members of St. Agnes Catholic Church

**Title 19—DEPARTMENT OF HEALTH  
Division 60—Missouri Health Facilities Review  
Committee**

**Chapter 50—Certificate of Need Program**

**APPLICATION REVIEW SCHEDULE**

**DATE FILED:**

APPLICATION PROJECT NO. &  
NAME/COST & DESCRIPTION/  
CITY & COUNTY

The Missouri Health Facilities Review Committee has initiated review of the applications listed below. These applications are available for public inspection at the address shown below.

**November 29, 1999**

**#2898 HS:** Jefferson Memorial Hospital  
\$1,928,000, Replace mobile MRI with fixed unit  
Crystal City (Jefferson County)

**#2906 RS:** Branson Assisted Living Ctr.  
\$2,716,000, Relocate 30 RCF II beds  
Branson (Taney County)

**#2859 FS:** Cape Radiology Grp., Inc.  
\$3,226,926, Replace diagnostic imaging center  
Cape Girardeau (Cape Girardeau County)

**#2920 HS:** St. Luke's Hospital  
\$2,688,800, Renov./expand radiology  
Chesterfield (St. Louis County)

**#2924 FS:** St. Charles Surgery Affiliates  
\$4,652,457, Establish ambulatory surgery center  
O'Fallon (St. Charles County)

Any person wishing to request a public hearing for the purpose of commenting on any of these applications must submit a written request to this effect which must be received at the address listed below by December 29, 1999. All written requests and comments should be sent to:

Chairman  
Missouri Health Facilities Review Committee  
c/o Certificate of Need Program  
915 G Leslie Boulevard  
Jefferson City, MO 65101

For additional information contact  
Donna Schuessler, 573-751-6403.

**OFFICE OF ADMINISTRATION  
Division of Purchasing**

**BID OPENINGS**

Sealed Bids in one (1) copy will be received by the Division of Purchasing, Room 580, Truman Building, P.O. Box 809, Jefferson City, MO 65102, telephone (573) 751-2387 at 2:00 p.m. on dates specified below for various agencies throughout Missouri. Bids are available to download via our homepage: <http://www.state.mo.us/oa/purch/purch.htm>. Prospective bidders may receive specifications upon request.

B1Z00116 X-Ray System: Simple Fixed 1/4/00;  
B1Z00108 Laboratory Equipment 1/5/00;  
B1Z00112 Medical Equipment Rental 1/5/00;  
B1Z00192 Meats-February 1/6/00;  
B1Z00201 Building Supplies-Brookfield 1/6/00;  
B1Z00202 Plumbing Supplies-Brookfield Area 1/6/00;  
B3Z00098 Sexual Assault Victim Services 1/6/00;  
B3Z00185 Uniforms: State Parks 1/6/00;  
B1Z00190 Truck: 2 Ton 1/7/00;  
B1Z00200 Lift: Scissor 1/10/00;  
B2Z00043 Software: Report Distribution Solution 1/13/00;  
B3Z00106 Vending Services-St. Louis Federal Bldg. 1/13/00;  
B2Z00045 Long Distance: Direct Dial/Operator Services 1/14/00;  
B3Z00092 Abstinence Only Education 1/14/00;  
B3Z00079 Training: Multidisciplinary Core Curriculum 1/18/00;  
B3Z00090 Training Services; Mental Health Professional Providers 1/20/00;  
B3Z00062 Case Management/Cognitive Restructing Therapy Services 1/24/00;  
B3Z00068 Case Management/Co-Occuring Sub Abuse & Mental Health Disorder 1/24/00;  
B3Z00063 Family Support Training Program 1/25/00;  
B3Z00084 Research Services-Tourism 1/27/00.  
B3Z00040 Exhibits; Design, Construct & Install 2/14/00;

It is the intent of the state of Missouri, Division of Purchasing to purchase the following as a single feasible source without competitive bids. If suppliers exist other than the one identified, contact (573) 751-2387 immediately.

1.) STROBE Software, supplied by Programart  
2.) Scriptographic Materials/Booklets, supplied by Channing L. Bete Co.

1.) Accreditation Services- Children's Service Program, supplied by Council on Accreditation (COA) of Services for Families and Children, Inc.  
2.) FORTIS Software, supplied by Information Now technologies.  
3.) Copyrighted Books and Videotapes, supplied by National Association for the Education of Young Children.

Joyce Murphy, CPPO,  
Director of Purchasing

**Rule Changes Since Update to  
Code of State Regulations**

This cumulative table gives you the latest status of rules. It contains citations of rulemakings adopted or proposed after deadline for the monthly Update Service to the *Code of State Regulations*, citations are to volume and page number in the *Missouri Register*, except for material in this issue. The first number in the table cite refers to the volume number or the publication year—21 (1996), 22 (1997), 23 (1998) and 24 (1999). MoReg refers to *Missouri Register* and the numbers refer to a specific *Register* page, R indicates a rescission, W indicates a withdrawal, S indicates a statement of actual cost, T indicates an order terminating a rule, N.A. indicates not applicable and RUC indicates a rule under consideration.

Rule Number	Agency	Emergency	Proposed	Order	In Addition
<b>OFFICE OF ADMINISTRATION</b>					
1 CSR 10	State Officials' Salary Compensation Schedule.....				23 MoReg 2473
					24 MoReg 2535
1 CSR 10-15.010	Commissioner of Administration.....		24 MoReg 2577		
1 CSR 20-5.010	Personnel Advisory Board.....		24 MoReg 2578		
1 CSR 20-5.015	Personnel Advisory Board.....		24 MoReg 2578		
1 CSR 20-5.020	Personnel Advisory Board.....		24 MoReg 2579		
1 CSR 20-5.025	Personnel Advisory Board.....		24 MoReg 2580		
<b>DEPARTMENT OF AGRICULTURE</b>					
2 CSR 10-5.005	Market Development.....	24 MoReg 2269			
2 CSR 10-5.010	Market Development.....		23 MoReg 2676		
2 CSR 60-1.010	Grain Inspection and Warehousing.....		24 MoReg 2755		
2 CSR 60-4.011	Grain Inspection and Warehousing.....		24 MoReg 2755		
2 CSR 60-4.040	Grain Inspection and Warehousing.....		24 MoReg 2755R		
2 CSR 60-4.070	Grain Inspection and Warehousing.....		24 MoReg 2756		
2 CSR 60-4.110	Grain Inspection and Warehousing.....		24 MoReg 2756		
2 CSR 60-4.140	Grain Inspection and Warehousing.....		24 MoReg 2757		
2 CSR 60-4.150	Grain Inspection and Warehousing.....		24 MoReg 2758		
2 CSR 60-4.180	Grain Inspection and Warehousing.....		24 MoReg 2758		
2 CSR 60-5.010	Grain Inspection and Warehousing.....		24 MoReg 2759		
2 CSR 60-5.020	Grain Inspection and Warehousing.....		24 MoReg 2759R		
			24 MoReg 2759		
2 CSR 60-5.030	Grain Inspection and Warehousing.....		24 MoReg 2760R		
2 CSR 60-5.040	Grain Inspection and Warehousing.....		24 MoReg 2760		
2 CSR 60-5.050	Grain Inspection and Warehousing.....		24 MoReg 2760		
2 CSR 60-5.070	Grain Inspection and Warehousing.....		24 MoReg 2761		
2 CSR 60-5.080	Grain Inspection and Warehousing.....		24 MoReg 2761		
2 CSR 60-5.100	Grain Inspection and Warehousing.....		24 MoReg 2762		
2 CSR 60-5.120	Grain Inspection and Warehousing.....		24 MoReg 2763		
2 CSR 70-13.010	Plant Industries.....		24 MoReg 1821	24 MoReg 2712	
2 CSR 70-13.015	Plant Industries.....		24 MoReg 1821	24 MoReg 2712	
2 CSR 70-13.020	Plant Industries.....		24 MoReg 1822	24 MoReg 2712	
2 CSR 70-13.025	Plant Industries.....		24 MoReg 1822	24 MoReg 2712	
2 CSR 70-13.030	Plant Industries.....		24 MoReg 1823	24 MoReg 2713	
2 CSR 70-13.035	Plant Industries.....		24 MoReg 1825	24 MoReg 2713	
2 CSR 70-13.040	Plant Industries.....		24 MoReg 1827	24 MoReg 2713	
2 CSR 80-2.180	State Milk Board.....	24 MoReg 2675	24 MoReg 2764		
2 CSR 100-8.010	Agricultural and Small Business Authority.....	24 MoReg 1787R	24 MoReg 1829R	24 MoReg 2713R	
<b>DEPARTMENT OF CONSERVATION</b>					
3 CSR 10-1.010	Conservation Commission.....		24 MoReg 2764		
3 CSR 10-4.115	Conservation Commission.....		24 MoReg 1479	24 MoReg 2156	
			24 MoReg 2581	This Issue	
3 CSR 10-4.116	Conservation Commission.....		24 MoReg 1484	24 MoReg 2156	
			24 MoReg 2582	This Issue	
3 CSR 10-4.125	Conservation Commission.....		24 MoReg 2583	This Issue	
3 CSR 10-5.205	Conservation Commission.....		24 MoReg 1486	24 MoReg 2157	
			24 MoReg 2583	This Issue	
3 CSR 10-5.210	Conservation Commission.....		24 MoReg 2586	This Issue	
3 CSR 10-5.215	Conservation Commission.....		24 MoReg 1486	24 MoReg 2157	
			24 MoReg 2586	This Issue	
3 CSR 10-6.405	Conservation Commission.....		24 MoReg 1487	24 MoReg 2158	
			24 MoReg 2586	This Issue	
3 CSR 10-7.405	Conservation Commission.....		24 MoReg 2587	This Issue	
3 CSR 10-7.455	Conservation Commission.....				24 MoReg 2989
3 CSR 10-8.505	Conservation Commission.....		24 MoReg 2587	This Issue	
<b>DEPARTMENT OF ECONOMIC DEVELOPMENT</b>					
4 CSR 10-2.160	Missouri State Board of Accountancy.....		24 MoReg 2625		
4 CSR 40-1.021	Office of Athletics.....	21 MoReg 2680			
4 CSR 40-5.070	Office of Athletics.....	21 MoReg 1963			
4 CSR 70-2.040	State Board of Chiropractic Examiners.....		24 MoReg 2201	This Issue	
4 CSR 70-2.050	State Board of Chiropractic Examiners.....		24 MoReg 2201	This Issue	
4 CSR 70-2.070	State Board of Chiropractic Examiners.....		24 MoReg 2202	This Issue	
4 CSR 90-13.020	State Board of Cosmetology.....		23 MoReg 1952		

Rule Number	Agency	Emergency	Proposed	Order	In Addition
4 CSR 90-13.040	State Board of Cosmetology .....		24 MoReg 1724 .....	24 MoReg 2713	
4 CSR 90-13.060	State Board of Cosmetology .....		24 MoReg 1724 .....	24 MoReg 2713	
4 CSR 100	Division of Credit Unions .....				24 MoReg 2647
					24 MoReg 2721
					This Issue
4 CSR 105-1.010	Credit Union Commission .....		24 MoReg 1829 .....	24 MoReg 2983	
4 CSR 105-2.010	Credit Union Commission .....	24 MoReg 1787 .....	24 MoReg 1833 .....	24 MoReg 2983	
4 CSR 105-3.010	Credit Union Commission .....	24 MoReg 1788 .....	24 MoReg 1839 .....	24 MoReg 2983	
4 CSR 105-3.020	Credit Union Commission .....	24 MoReg 1789 .....	24 MoReg 1839 .....	24 MoReg 2985	
4 CSR 105-3.030	Credit Union Commission .....	24 MoReg 1790 .....	24 MoReg 1839 .....	24 MoReg 2986	
4 CSR 120-2.060	Board of Embalmers and Funeral Directors .....		24 MoReg 2128 .....	24 MoReg 2986	
4 CSR 120-2.100	Board of Embalmers and Funeral Directors .....		24 MoReg 2129 .....	24 MoReg 2987	
4 CSR 150-2.001	State Board of Registration for the Healing Arts .....		23 MoReg 2565		
4 CSR 150-2.065	State Board of Registration for the Healing Arts .....		23 MoReg 2566		
4 CSR 150-3.080	State Board of Registration for the Healing Arts .....		24 MoReg 1497 .....	24 MoReg 2636	
4 CSR 150-3.200	State Board of Registration for the Healing Arts .....		24 MoReg 1497 .....	24 MoReg 2636	
4 CSR 150-3.201	State Board of Registration for the Healing Arts .....		24 MoReg 1498 .....	24 MoReg 2636	
4 CSR 150-3.202	State Board of Registration for the Healing Arts .....		24 MoReg 1502 .....	24 MoReg 2637	
4 CSR 150-3.203	State Board of Registration for the Healing Arts .....		24 MoReg 1506 .....	24 MoReg 2714	
4 CSR 150-7.300	State Board of Registration for the Healing Arts .....		23 MoReg 2703		
4 CSR 150-7.310	State Board of Registration for the Healing Arts .....		23 MoReg 2711		
4 CSR 165-2.010	Board of Examiners for Hearing Instrument Specialists .....		24 MoReg 1840 .....	24 MoReg 2716	
4 CSR 165-2.030	Board of Examiners for Hearing Instrument Specialists .....		24 MoReg 1840 .....	24 MoReg 2716	
4 CSR 165-2.050	Board of Examiners for Hearing Instrument Specialists .....		24 MoReg 1840 .....	24 MoReg 2717	
4 CSR 195-5.010	Workforce Development .....		24 MoReg 2314		
4 CSR 195-5.020	Workforce Development .....		24 MoReg 2315		
4 CSR 195-5.030	Workforce Development .....		24 MoReg 2318		
4 CSR 210-2.060	State Board of Optometry .....		22 MoReg 1443		
4 CSR 220-2.010	State Board of Pharmacy .....		24 MoReg 1841 .....	24 MoReg 2837	
4 CSR 220-2.020	State Board of Pharmacy .....		24 MoReg 1841 .....	24 MoReg 2837	
4 CSR 220-2.160	State Board of Pharmacy .....		24 MoReg 1842 .....	24 MoReg 2837	
4 CSR 230-2.065	Board of Podiatric Medicine .....		24 MoReg 2202 .....	This Issue	
4 CSR 235-1.015	State Committee of Psychologists .....		24 MoReg 2132 .....	This Issue	
4 CSR 235-1.025	State Committee of Psychologists .....		24 MoReg 2132 .....	This Issue	
4 CSR 235-1.026	State Committee of Psychologists .....		24 MoReg 2133 .....	This Issue	
4 CSR 235-1.030	State Committee of Psychologists .....		24 MoReg 2134 .....	This Issue	
4 CSR 235-1.031	State Committee of Psychologists .....		24 MoReg 2134 .....	This Issue	
4 CSR 235-1.060	State Committee of Psychologists .....		24 MoReg 2134 .....	This Issue	
4 CSR 235-1.063	State Committee of Psychologists .....		24 MoReg 2135 .....	This Issue	
4 CSR 235-2.020	State Committee of Psychologists .....		24 MoReg 2135 .....	This Issue	
4 CSR 235-2.040	State Committee of Psychologists .....		24 MoReg 2135 .....	This Issue	
4 CSR 235-2.050	State Committee of Psychologists .....		24 MoReg 2137 .....	This Issue	
4 CSR 235-2.060	State Committee of Psychologists .....		24 MoReg 2138 .....	This Issue	
4 CSR 235-2.065	State Committee of Psychologists .....		24 MoReg 2139 .....	This Issue	
4 CSR 235-2.070	State Committee of Psychologists .....		24 MoReg 2140 .....	This Issue	
4 CSR 235-3.020	State Committee of Psychologists .....		24 MoReg 2140 .....	This Issue	
4 CSR 235-4.030	State Committee of Psychologists .....		24 MoReg 2141 .....	This Issue	
4 CSR 240-2.010	Public Service Commission .....		24 MoReg 2318R		
			24 MoReg 2318		
4 CSR 240-2.015	Public Service Commission .....		24 MoReg 2319		
4 CSR 240-2.020	Public Service Commission .....		24 MoReg 2142 .....	24 MoReg 2838	
4 CSR 240-2.030	Public Service Commission .....		24 MoReg 2142 .....	24 MoReg 2838	
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12 CSR 10-112.300	Director of Revenue		24 MoReg 2981		
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12 CSR 30-2.017	State Tax Commission		24 MoReg 2696		
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12 CSR 40-80.010	State Lottery		24 MoReg 1736	24 MoReg 2643	
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12 CSR 40-80.030	State Lottery		24 MoReg 1737	24 MoReg 2644	
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12 CSR 40-90.090	State Lottery .....	24	MoReg 1741R .....	24	MoReg 2646R
12 CSR 40-90.100	State Lottery .....	24	MoReg 1741R .....	24	MoReg 2646R
12 CSR 40-90.110	State Lottery .....	24	MoReg 1741 .....	24	MoReg 2646
12 CSR 40-90.120	State Lottery .....	24	MoReg 1741R .....	24	MoReg 2646R
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12 CSR 60-1.020	Motor Vehicle Commission .....	24	MoReg 2702R .....		
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12 CSR 60-2.110	Motor Vehicle Commission .....	24	MoReg 2706R .....		
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13 CSR 40-2.305	Division of Family Services .....	23	MoReg 2133T .....		
13 CSR 40-2.310	Division of Family Services .....	23	MoReg 2133T .....		
13 CSR 40-2.315	Division of Family Services .....	23	MoReg 2133T .....		
13 CSR 40-2.320	Division of Family Services .....	23	MoReg 2134T .....		
13 CSR 40-2.325	Division of Family Services .....	23	MoReg 2134T .....		
13 CSR 40-2.330	Division of Family Services .....	23	MoReg 2134T .....		
13 CSR 40-2.335	Division of Family Services .....	23	MoReg 2134T .....		
13 CSR 40-2.340	Division of Family Services .....	23	MoReg 2134T .....		
13 CSR 40-2.345	Division of Family Services .....	23	MoReg 2134T .....		
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13 CSR 70-10.110	Medical Services .....	24	MoReg 2575 .....	24	MoReg 2406
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13 CSR 70-15.040	Medical Services .....			24	MoReg 1749 .....
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15 CSR 30-150.020	Secretary of State (Changed to 12 CSR 10-9.110)				24 MoReg 2989
15 CSR 30-150.030	Secretary of State (Changed to 12 CSR 10-9.120)				24 MoReg 2989
15 CSR 30-150.040	Secretary of State (Changed to 12 CSR 10-9.130)				24 MoReg 2989
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15 CSR 50-4.010	Treasurer		24 MoReg 2417		
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1 CSR 10-15.010 Cafeteria Plan . . . . . June 28, 2000

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2 CSR 10-5.005 Price Reporting Requirements for Livestock Purchases by Packers . . . . . March 2, 2000

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2 CSR 80-2.180 Adoption of the *Grade A Pasteurized Milk Ordinance* with Administrative Procedures—Recommendations of the United States Public Health Service/Food and Drug Administration (PMO) . . . . . May 1, 2000

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2 CSR 100-8.010 Description of Operation, Definitions, Applicant Requirements, Procedures for Grant Approval, Funding of Grants, and Amending the Rules for the Missouri Value-Added Grant Program . . . . . February 24, 2000

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4 CSR 105-2.010 Rules of Procedure . . . . . January 7, 2000

4 CSR 105-3.010 Definitions . . . . . January 7, 2000

4 CSR 105-3.020 Criteria for Additional Membership Groups . . . . . January 7, 2000

4 CSR 105-3.030 Economic Advisability . . . . . January 7, 2000

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5 CSR 80-800.290 Application for Substitute Certificate of License to Teach . . . . . January 26, 2000

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7 CSR 10-2.010 Overdimension and Overweight Permits . . . . . May 16, 2000

7 CSR 10-2.010 Overdimension and Overweight Permits . . . . . May 16, 2000

7 CSR 10-10.010 Definitions . . . . . May 16, 2000

7 CSR 10-10.040 Contractor Performance Questionnaire Used in Evaluating Contractor Performance . . . . . May 16, 2000

7 CSR 10-10.050 Procedure and Schedule for Completing the Contractor Performance Questionnaire . . . . . May 16, 2000

7 CSR 10-10.070 Procedure for Annual Rating of Contractors . . . . . May 16, 2000

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8 CSR 60-3.040 Employment Practices Related to Men and Women . . . . . March 24, 2000

### Department of Mental Health

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9 CSR 30-4.030 Certification Standards Definitions . . . . . February 17, 2000

9 CSR 30-4.034 Personnel and Staff Development . . . . . February 17, 2000

9 CSR 30-4.035 Client Records of a Community Psychiatric Rehabilitation Program . . . . . February 17, 2000

9 CSR 30-4.039 Service Provision . . . . . February 17, 2000

9 CSR 30-4.042 Admission Criteria . . . . . February 17, 2000

9 CSR 30-4.043 Treatment Provided by a Community Psychiatric Rehabilitation Program . . . . . February 17, 2000

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10 CSR 10-5.380 Motor Vehicle Emissions Inspection . . . . . June 28, 2000

#### Public Drinking Water Program

10 CSR 60-3.010 Construction Authorization, Final Approval of Construction Owner-Supervised Program and Permit to Dispense Water . . . . . March 27, 2000

10 CSR 60-3.020 Continuing Operating Authority . . . . . March 27, 2000

10 CSR 60-3.030 Technical, Managerial, and Financial Capacity . . . . . March 27, 2000

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11 CSR 45-10.150 Child Care Facilities—License Required . . . . . June 7, 2000

11 CSR 45-17.020 Procedure for Applying for Placement on List of Disassociated Persons . . . . . January 20, 2000

11 CSR 45-13.055 Immediate Revocation or Suspension of License—Expedited Hearing . . . . . February 24, 2000

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11 CSR 50-2.350	Applicability of Motor Vehicle Emission Inspection	June 28, 2000
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19 CSR 30-40.303	Medical Director Required for All: Ambulance Services and Emergency Medical Response Agencies That Provide Advanced Life Support Services, Basic Life Support Services Utilizing Medications or Providing Assistance With Patients' Medications, or Basic Life Support Services Performing Invasive Procedures Including Invasive Airway Procedures; Dispatch Agencies Providing Pre-arrival Medical Instructions; and Training Entities	February 3, 2000
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